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SUMMARY RECORD OF THE 1098th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 October 1991, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Austria (CCPR/C/51/Add.2)

1. At the invitation of the Chairman, Mr. Berchtold, Mr. Miklau, Mr. Szymanski and Mr. Strohal took places at the Committee table.

2. The CHAIRMAN welcomed the members of the Austrian delegation, paying tribute to the outstanding contribution Austria had made over the years to the work of the Committee in the persons of Mr. Ermacora, a former member of the Committee, Mr. Herndl, former Director of the Centre for Human Rights and current member of the Committee, and Mrs. Klein, the Committee's very able Secretary.

3. He invited Mr. Berchtold, Director of the Constitutional Service at the Federal Chancellery, to introduce his country's second periodic report (CCPR/C/51/Add.2).

4. Mr. BERCHTOLD (Austria) said that in presenting his Government's second periodic report to the Committee, his delegation looked forward to continuing the dialogue that had been initiated a year previously. He drew the Committee's attention to an event too recent to appear in the report: the Second Optional Protocol regarding abolition of the death penalty was currently before the Austrian Parliament for approval and its ratification was expected in early 1992. His delegation stood ready to answer any questions the members of the Committee might wish to put. Should there be any question for which an immediate answer could not be given, it would be dealt with in Austria's next periodic report.

5. The CHAIRMAN invited the representative of Austria to respond to the questions raised in the list of issues, beginning with section I.

I. Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3))

(a) What legislative, administrative or other measures have been taken to give effect to the rights recognized in the Covenant? Have any difficulties been faced by Austria in that regard and, if so, please provide examples.

(b) What remedies are available to individuals who claim that their rights under the Covenant have been violated? Please provide relevant examples.

(c) Please provide information on the activities of governmental institutions entrusted with the task of promoting human rights. Does the Government envisage the establishment of a National Commission on Human Rights, an Ombudsman or similar institution?

(d) What measures have been taken by the Government to increase public awareness of the Covenant and the Optional Protocol?

6. Mr. BERCHTOLD (Austria) said, in reply to question I (a), that at the time of ratifying the Covenant in 1978, Austria had already been guaranteeing fundamental human rights, both in its domestic law by means of the Basic Law of 1867, which contained a list of human rights, and by means of the European Convention on Human Rights. The latter had been ratified by Austria in 1958 and made part of domestic constitutional law in 1964, as a result of which it could be invoked as a basis for appeal to the Constitutional Court. Given that situation, the Austrian Parliament had at ratification decided not to adopt the Covenant as an integral part of domestic law but had accepted it as an instrument which lay outside domestic law but represented an obligation under international public law. That procedure thus precluded its provisions from being used as a basis for appeal to the Constitutional Court. The Parliament, however, was of the opinion that the rights and freedoms enshrined in the Covenant were already guaranteed by the laws of the country, under either constitutional law or ordinary law, through the agency of the 1867 Basic Law and the European Convention on Human Rights. Austria therefore found no difficulties in giving effect to the rights recognized in the Covenant.

7. Replying to question I (b), he explained that the body of law in Austria had two main branches, one applied by the administrative authorities and the other by the courts. The first was further subdivided into a criminal aspect and an administrative aspect and the second into civil law and criminal law.

8. In the branch of law applied by the courts, a hierarchy of courts existed through which remedies could be sought by claimants. At the lowest level were the district courts, from which appeal could be made to Länder courts, then to courts with jurisdiction over a territory comprising several Länder, and finally to the Supreme Court. Depending on the procedural level at which the initial case was heard, there was thus at least one and in some cases as many as three levels of appeal.

9. There was also a hierarchy of decision-making powers in the branch of law applied by the administrative authorities, starting with the principal district authorities, passing through the Governments of the Länder and ending with the Ministries. At each of those levels an appeal against any decision could be made to a higher level. After exhaustion of all levels of appeal in the administrative branch, the appeal could be carried further to a court which, depending on the grounds for the appeal, would be either an administrative court or the Constitutional Court. A complaint that an administrative decision constituted a violation of human rights was dealt with by the Constitutional Court, whose function it was to examine two aspects: whether a given administrative decision had itself violated a human right and whether the legal provision on which that decision rested had been in violation of a human right. In the latter case, the Court was empowered to repeal the offending provision and rescind the administrative decision against which appeal had been made.

10. As far as question I (c) was concerned, Austria did not have a national commission on human rights nor was there any intention at present to establish one. Austria had established the office of Ombudsman in 1976, following the Scandinavian model, as an institution that could be applied to in the event of any improper action on the part of an administrative authority. In Austria,

the Ombudsman was not empowered to scrutinize the judiciary since that was considered contrary to the independence of that institution. There was no government body in Austria specifically responsible for promoting human rights, since it was considered that such tasks were the province of the non-governmental organizations and private institutions which were active in such matters. All government institutions at federal and Länder level were ready to provide any information on human rights on request.

11. With regard to question I (d), as a result of the fact that the Covenant was not directly applicable in Austria and its provisions could not be invoked in a court of law or before an administrative authority, the general public was less aware of the Covenant than of the European Convention on Human Rights. However, the fact that the Committee now had before it the first two communications from individuals ever received from Austria testified to an increasing awareness of the Covenant in the country. The provisions of the Covenant covered much the same ground as the European Convention on Human Rights, particularly since the latter's amendment by its Seventh Protocol which had added a number of matters covered by the Covenant not formerly in the Convention. Since the two instruments were now virtually the same, there could be said to be general public awareness of the Covenant and its Optional Protocol.

12. Mrs. HIGGINS expressed pleasure at the opportunity for the Committee to continue its dialogue with the Austrian delegation, commending the quality of the report submitted and the clarity of the answers given to the initial questions. She also expressed appreciation of the excellent work of Mr. Herndl and Mrs. Klein, who were a great credit to their country.

13. The report was extremely informative; she regretted only that it was two years late, which had unnecessarily held up the dialogue. Furthermore, it would have been useful if, in addition to the wealth of formal information it provided on Austrian law and administrative procedures, the report could have placed those formalities in the framework of contemporary reality, describing the current social and political background against which human rights were exercised and the problems that were inevitably being experienced. Another shortcoming, which was one the Committee frequently found in reports from other European countries and to which the Austrian representative had himself referred, was the omission of a brief reference to cases that had occurred which involved the European Convention on Human Rights. Despite the fact that the European Convention was outside the purview of the Committee, the close relationship between the two instruments made any decisions in cases invoking the Convention of interest to the Committee.

14. As had been frankly pointed out in the Austrian representative's reply to question I (d), the European Convention on Human Rights had a higher public profile in European countries than did the Covenant. However, the Covenant did contain some provisions, such as its article 14, that dealt in greater detail with some rights and others, namely articles 26 and 27, that were not reflected in the Convention at all. In the Committee's eyes therefore, it was important that those rights and provisions should be publicized within European countries.

15. The operation of the constitutional machinery for protection of human rights in Austria had been clearly explained. She asked whether, since in general prevention was better than cure, there was in addition any governmental machinery for monitoring legislation in preparation to ensure its compatibility with Austria's international obligations under the Covenant. In the context of remedies available to individuals, she asked, since no case involving an individual under Austrian jurisdiction had yet come before the Committee, how complaints invoking an international instrument like the Covenant would be handled by Austria in practical constitutional terms in the light of the provisions of the Optional Protocol.

16. Mr. ANDO welcomed the Austrian delegation and also paid tribute to the contribution made by Mr. Herndl and Mrs. Klein to the work of the Committee.

17. The difference in status under Austrian law of the Covenant and the European Convention on Human Rights had been mentioned. He would like to know the reason for that difference and asked whether there was any prospect of the Covenant being incorporated into Austrian law in its entirety, in view of the fact that some of its provisions were not fully reflected in the European Convention.

18. In conclusion, he asked whether there was any likelihood of the large number of reservations Austria had made to the Covenant when it had ratified it being reduced.

19. Mr. EL SHAFEI, welcoming the Austrian delegation, said he looked forward to a fruitful and constructive dialogue between its members and the Committee. He joined previous speakers in paying tribute to the considerable contribution to the Committee's work made by Mr. Herndl and Mrs. Klein.

20. In view of the fact that the Covenant did not form an integral part of Austrian law, he asked what form of procedure had been employed to ratify it and requested a clarification of its exact legal status. Noting that the Convention Against Torture, an international instrument with the same moral force as the Covenant, had been adopted in Austria by a Constitutional Act, he wondered why the Covenant could not have been dealt with in the same manner.

21. Referring to Austria's reservation to the Optional Protocol, to the effect that the Committee should not consider any communication from an individual unless it had been ascertained that the same matter had not been examined by the European Commission of Human Rights, he asked whether that reservation precluded the Committee from dealing with communications under examination by the European Commission. Did Austria have the same reservations in connection with the United Nations Convention Against Torture since there was also a European Convention against Torture?

22. Mr. MAVROMMATIS joined previous speakers in welcoming the high-level Austrian delegation and in commending the contribution of Austrians to human rights in general and to the work of the Committee in particular. It was a special pleasure to welcome Mr. Berchtold once again. His introductory remarks and the report itself had been extremely helpful and provided a good basis for the continuation of the dialogue.

23. On the subject of the Constitutional Court, he asked whether there were any matters which could be allowed to bypass the administrative courts and go directly before the Constitutional Court. He also wondered, in reference to paragraph 36 of the report, whether any particular difficulties had been created by the fact that nullification of a law or part of a law did not have immediate effect.

24. Mr. LALLAH associated himself with other speakers in their appreciation of the high level of the Austrian delegation and in paying tribute to those Austrian nationals whose contributions in the field of human rights were so outstanding.

25. Referring to section I (d) of the list of issues, he said the Committee would find it useful to know the precise reasons why Austria had not given direct effect to the Covenant. An insight into the Government's thinking on that point might help solve the problems raised by Austria's long list of reservations. He also asked how far Austria's report had been publicized within Austria and whether it had been deposited in Parliament or discussed in the media with a view to generating public interest in Austria's international obligations. The Committee would also like to know what measures had been taken by the Government to make judges, lawyers and administrative officials aware of those same obligations, which should influence them when dealing with human rights matters. In that connection he emphasized that the Committee, through its general comments, for example, and the jurisprudence evolving under the Optional Protocol was able to help States parties implement the provisions of the Covenant. Was the fact that only two communications under the Optional Protocol had been received from Austria perhaps due to ignorance on the part of the Austrian people, and should not the Government therefore make greater efforts to publicize its obligations under the Optional Protocol, particularly bearing in mind that lawyers might in certain situations prefer to advise their clients to approach the Human Rights Committee rather than the European Commission of Human Rights?

26. While Austria's report was a competent one, it might have been more detailed in certain areas so as to provide a clearer picture of the reality in Austria.

27. Mr. MYULLERSON welcomed Austria's very able delegation and thanked Mr. Berchtold for his very clear introduction and replies to the Committee's questions. Like his colleagues he was extremely pleased to have two Austrian nationals working with the Committee: their contribution to the Committee's work could not be overemphasized.

28. Austria had presented a very clear, well-drafted and comprehensive report but more statistical data and more references to administrative decisions relevant to articles of the Covenant would have been welcome. It was to be hoped that that shortcoming would be overcome in the course of the dialogue.

29. He asked whether all the protocols to the European Convention on Human Rights had been ratified by Austria and whether they were also part of the constitutional law of the land and directly applicable in Austria.

30. Article 9 (1) of the Austrian Constitution stated that the generally recognized rules of international law were regarded as integral parts of Federal law. What was the practical significance of that article, and were the generally recognized customary rules of international law in the field of human rights, in particular the provisions of the Covenant, directly applicable in Austrian courts?

31. Lastly, he wondered whether the Austrian Government was considering withdrawing some of its reservations to the Covenant.

32. Mr. AGUILAR URBINA welcomed the Austrian delegation and said it was a pleasure to have two Austrian nationals working with the Committee. He also thanked Mr. Berchtold for his very clear statement. The report itself was satisfactory, but like other colleagues he felt that some clarifications were needed.

33. He had been particularly surprised by the large number of Austria's reservations to the Covenant and sought a specific explanation for that relating to article 26 which read: "Article 26 is understood to mean that it does not exclude different treatment of Austrian nationals and aliens, as is also permissible under article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination." (see CCPR/C/2/Rev.2, p. 12). As there should be no different treatment of Austrian nationals and aliens under the Covenant, he wondered whether any other articles of the Covenant were thereby affected.

34. The report referred to various laws and treaties and to the European Convention on Human Rights as making up Austrian constitutional law. In that connection, he wondered whether the Austrian Constitution as a whole and its constitutional rules prohibited all types of discrimination to the extent that they were prohibited in the Covenant. Noting the statement in paragraph 69 of the Austrian report that Austrian constitutional law did not contemplate the suspension of fundamental rights, he asked whether Austria had any other law under which fundamental rights could be suspended. Lastly, he wondered what status the Covenant had in Austrian law and whether there was any legal procedure under which the provisions of the Covenant could be abrogated.

35. Mr. PRADO VALLEJO, welcoming Austria's distinguished delegation, recalled with pleasure its earlier very constructive dialogue with the Committee and expressed confidence that its second visit would produce equally good results. Austria, after all, was a highly democratic country which had played an important role in the history of Europe and of the world. It was also a pleasure to have had two Austrian nationals on the Committee and to have the very able support of a third.

36. Generally speaking, the report was satisfactory in that it provided a very comprehensive picture of Austrian legislation and even gave the impression that Austria was a human rights paradise. In reality he knew that that could not be true, yet the report did not mention any specific human rights difficulties or ways in which Austrian legislation was being improved. While, therefore, the report respected the Committee's guidelines, it might have discussed more fully the implementation of the provisions of the Covenant. It was regrettable that the Covenant had not been incorporated into Austria's

constitutional legislation and that no recourse to it appeared to be possible before Austrian courts. When analysing the reports of States parties, the Committee invariably expressed the hope that it would eventually be possible to invoke the Covenant before a court of law and it was to be hoped that that would one day be true of Austria.

37. Article 60 (3) of the Austrian Constitution stated that members of reigning houses or of formerly regnant families were excluded from eligibility for election as Federal President. He and other members of the Committee had found that provision puzzling when Austria's initial report had been considered, and continued to do so while accepting that the final decision on the subject lay with the Austrian people.

38. On the subject of the administrative courts, it appeared that one quarter of their members were civil servants: in those circumstances, could those courts really act as independent and impartial bodies at all times, particularly where a conflict of interests might be involved? He was particularly interested in that matter given the efforts that were being made in his own country to have a number of laws declared unconstitutional precisely because some judges were appointed by government ministers. He also wondered whether those courts were empowered to make decisions on compensation claims and whether individuals were able to appeal to a civil court against compensation decisions by an administrative court which they considered inadequate.

39. Lastly, he felt that Austria's reservations to the Covenant were too general in stating that certain articles would only be complied with as long as they remained compatible with Austrian legal provisions, and efforts should therefore be made to reduce their number and to make any that remained more specific.

40. Mr. SADI said that the composition of Austria's delegation was most impressive and that the Committee welcomed the opportunity to obtain information at first hand. He also paid tribute to Austria as a great European country that had made considerable progress in consolidating democracy and in promoting human rights. The report was meticulous and frank, even to the extent of including court opinions where relevant.

41. Given that Austria had in 1964 incorporated the European Convention on Human Rights into its national law, he wondered whether there were any legal obstacles to the incorporation of the Covenant as well, or whether there was some policy decision which gave precedence to the European Convention over the United Nations Covenant. If that were so, was there any mechanism whereby at least those parts of the Covenant that were not reflected in the European Convention could be incorporated into Austria's national law?

42. The reservation to which Mr. El Shafei had drawn attention, to the effect that a communication could not be considered admissible if it had already been examined by the European Commission of Human Rights, clearly demonstrated that the European Commission was considered to have priority over the Human Rights Committee and that the United Nations system was relegated to second place after the European institutions.

43. Concern had been expressed in other human rights forums about the number of reservations entered by countries, and he had heard that an effort was being made to bring the issue to the International Court of Justice for a ruling as to their legality and their conformity with the letter and spirit of the instruments concerned. He was convinced that Austria was a leading country in the observance of human rights, but the entering of so many reservations distorted the picture and was not in accordance with the spirit in which Austria had ratified the Covenant. He urged the State party to reconsider its reservations with respect both to the Covenant and to the Optional Protocol.

44. He looked forward to continuing the dialogue with the Austrian delegation.

45. Mr. WENNERGREN welcomed the Austrian delegation and expressed appreciation for the useful report and introductory comments. Thanks were also due to Austria for its contribution to the Committee's work through Mr. Ermacora, Mr. Herndl and Mrs. Klein.

46. On section I (a) of the list of issues, he had been surprised to note that no mention had been made of any difficulties experienced by Austria in giving effect to the rights recognized in the Covenant, bearing in mind that most States parties had some difficulties in complying with all its articles. He referred particularly to certain problems Austria had had in complying with the provisions of the European Convention on Human Rights on freedom of expression as, for example, in the Lingens case. What procedure would be followed in such cases? Would the issue be submitted to the Government for a formal decision or to the Nationalrat and would the judiciary hold any consultations? The difficulties that had arisen with respect to the European Convention were also likely to arise with regard to the Covenant. There might also be some problems in complying with article 19 with respect to the freedom to seek, receive and impart information, on which most States had had some difficulties. Had there been any systematic examination of that issue and, if so, who was responsible for initiating it; and was Austrian legislation fully compatible with the provisions of article 19?

47. Mr. FODOR welcomed the Austrian delegation and expressed appreciation to Mrs. Klein and Mr. Herndl, whose expertise and experience were extremely valuable to the Committee in its work. The Austrian report was a good one as to both content and format, and had been prepared in full compliance with the Committee's guidelines. It could serve as a model in many respects, though not, unfortunately, for the timing of its submission.

48. With respect to the revision of the Basic Law of 1867, during the consideration of the State party's initial report, a question had been asked concerning the recodification of legislation dealing with fundamental rights, and the head of the delegation had informed the Committee that a commission established in 1946 to revise the Basic Law had been considering the issue for 10 years and that a drafting committee established subsequently was close to completing its work. He asked whether that had now been done and, if so, with what result.

49. As Mr. Prado Vallejo had noted, the Constitution excluded members of the ruling and former ruling families from eligibility for election as President. While the need for that provision at the time of drafting had been evident, he questioned the need for its continued existence after so many years. He asked whether any action had been taken or was envisaged to amend that provision of the Constitution.

50. Mr. BERCHTOLD (Austria) thanked members of the Committee for their friendly words and critical comments. One of the main questions touched upon by many speakers was the manner in which the report should be prepared. He had prepared reports for submission to the Committee on Economic, Social and Cultural Rights in which he had included a considerable amount of statistical data and facts, but had then been criticized for doing so and had been asked to submit a more readable report in the future. Likewise, in presenting his country's initial report to the Human Rights Committee he had been criticized for dwelling too much on the European Convention on Human Rights, but members had now expressed a wish to know more about what was taking place in Strasbourg and about the jurisprudence of the Court there. He would, of course, be happy to provide such information in the third periodic report.

51. The second question touched upon had been the relationship between the European Convention and the Covenant. There was no question of giving second place to the Covenant, but the European Convention predated it and, by a special constitutional law, had been incorporated into Austria's domestic law in 1964. By the time the Covenant had been adopted in 1966, Austria had thus found itself in an unchangeable legal situation. In considering its ratification it had noted that it was worded differently from the European Convention in its provisions on the same fundamental rights, and there were doubts as to whether some provisions could be directly applicable. There had thus been some legal obstacles to dealing with the Covenant in the same manner as with the European Convention and to incorporating the Covenant as constitutional law into domestic law.

52. Austria followed a two-fold approach in dealing with treaties. In the parliamentary proceedings for the adoption of an international treaty, Parliament could decide either to adopt it in the normal way so that it became domestic law, or that it should remain an international obligation to be fulfilled by specific internal legal measures. The latter had been the case with the Covenant and it had been thought that the provisions of the Basic Law of 1867 and of the European Convention as amended by subsequent protocols would ensure compliance with the provisions of the Covenant.

53. The International Convention on the Elimination of All Forms of Racial Discrimination contained a number of provisions which Austria had found unsuitable for incorporation into domestic legislation, and it had therefore been decided to fulfil its provisions by a specific Constitutional Act, which had been adopted by Parliament in 1974.

54. In reply to a question by Mrs. Higgins, he confirmed that pre-monitoring procedures, for which his own office was responsible, had been provided for in forthcoming legislation. The text of every statute or decree was scrutinized in the light of the fundamental rights and freedoms provided for in the Covenant, the European Convention and domestic law.

55. Mrs. Higgins had also drawn attention to article 2 (3) (a) of the Covenant requiring each State party to ensure that any person whose rights or freedoms were violated would have an effective remedy. If a person complained to the Human Rights Committee that his rights under the Optional Protocol had been violated, and if the Committee ruled that Austria had failed to fulfil its obligations under article 2 (3) (a) in that regard, then the domestic legislation would have to be changed to provide for a new remedy or to allow for the use of an existing one. Several changes had, in fact, been made in the legislation to comply with decisions of the European Court.

56. On the question of reservations, Austria had encountered a number of problems in its ratification of the Covenant. For example, it had not regarded the provisions with respect to juvenile prisoners as adequate or in conformity with its own practice, and that had been one of the reasons for its reservation on that point. A second reason had been the difference that existed between the provisions of the European Convention, which had become part of the constitutional law, and the Covenant. It would always be possible to consider whether or not any of the reservations should be withdrawn.

57. With respect to the reservation on the Optional Protocol, there had been a difference of opinion in the Committee many years earlier as to how to interpret the provision in that instrument stating that the Committee was not competent to consider cases that were being examined under another procedure of international investigation or settlement. There had been a particular case in which the person concerned had first appealed to the European Commission of Human Rights and, when that body had found his complaint inadmissible, had then brought his case before the Human Rights Committee, in which a considerable difference of opinion had arisen. Austria had been concerned to avoid such discussion when ratifying the Optional Protocol and had entered a reservation that any case that had been decided upon in Strasbourg should not be brought before the Human Rights Committee.

58. Mr. MAVROMMATIS had raised the question of the Constitutional Court. There was direct access to that body once all the administrative remedies had been exhausted. Some problem arose in the case of the repeal of an Act, for which a certain time-limit was set. According to the jurisprudence of the Constitutional Court, a provision could not be re-examined by the Court within that time-limit before the repeal and the authorities had to apply it even if it had been declared unconstitutional. The intention was to avoid any gaps. The same applied to long-standing cases. Application had to be made to the Constitutional Court within a certain time-limit, failing which the right to such application was lost.

59. Replying to Mr. Lallah's questions, he said that Austria's reports were not normally publicized widely, although they were available to anyone who wished to see them. Nor were there any television broadcasts concerning the Committee's work. Specific views or general comments on certain specific problems of interest were communicated by letter to judges or the administrative authorities, but that applied only to important cases, bearing in mind that neither a judge nor the administrative authority was required to apply the provisions of the Covenant directly, but rather those of the European Convention and domestic law. That reply also answered Mr. Myullerson's similar question. All the protocols to the European Convention had been ratified,

although the ninth protocol was not yet in force and the signing of the tenth was still under consideration, but they all formed part of domestic law. No question had yet arisen with respect to the point raised by Mr. Myullerson on article 9 of the Constitution, and there had been no court decision as to whether human rights were generally recognized rules of international law. He did not know how the Constitutional Court would interpret article 9 in such a context.

60. Mr. Aguilar Urbina had drawn attention to article 26 of the Covenant with respect to differences made between citizens and foreigners. That issue had given rise to legal difficulties for Austria in ratifying the Covenant because, under the Constitution, the principle of equal treatment applied only to citizens. Following the adoption of the Constitutional Act on the International Convention on the Elimination of All Forms of Racial Discrimination, a constitutional provision had been adopted to the effect that the principle of equality must be applied to all aliens in Austria while allowing for some differences of treatment with respect to employment in certain professions, such as the civil service, for which only citizens were eligible. Some past laws which could be regarded as discriminatory, such as that requiring aliens to make a certain payment if they wished to bring a claim before a court, had been repealed. There was no suspension of fundamental rights.

61. As to whether a domestic law could abrogate the Covenant, the latter instrument was an international obligation for Austria and any abrogation would be a violation of international law.

62. Mr. Prado Vallejo had expressed surprise at the apparent absence of difficulties for Austria in giving effect to the rights recognized in the Covenant. If the word "difficulties" was taken to mean any legal situation that was contrary to Austria's obligations under the Covenant, there was certainly no such contradiction, although there might be individual cases in which a person considered his rights to have been violated.

63. On the question of the former Imperial family, there had been historical occasions in the past in which the provision referred to had been applicable but they were probably so no longer. He was not in a position to give an assurance that the provision would be repealed, but he would convey the views of members of the Committee to his Government.

64. Mr. Prado Vallejo had further asked whether it was possible for members of the administrative courts who were former civil servants to be independent. The answer was in the affirmative. A person's former functions need be no impediment to genuine independence. It was the personality of the judge that ensured his independence and no difficulties had ever been experienced in that regard.

65. There was a dual procedure with respect to the compensation of victims. Human rights cases originating in the administrative field came exclusively before the Constitutional Court and the Court decided whether or not a violation had taken place. If it decided that there had been such a violation and there had been damage to the person concerned, he could bring new proceedings before the civil courts invoking State liability, and might receive

compensation. That was admittedly a long procedure, but there was a problem in requiring the Constitutional Court to perform additional tasks when it was already overburdened.

66. Mr. Sadi had asked whether a partial incorporation of the Covenant into domestic law could be considered. That was not possible under the existing constitutional law, and in any case he doubted its advisability.

67. Mr. Wennergren had referred to the Lingens case in which the European Court of Human Rights had found a certain interpretation by a judge, but not the decision in the case, to be a violation. There were two possible solutions to avoid the possibility of that problem recurring. The first would be to point out to judges that, while they were of course independent, they might wish to bear in mind the provisions of the Covenant. The second solution would be to amend the law, particularly in respect of criminal procedure.

68. With reference to article 19, everyone had the right to impart information and ideas of all kinds and the State must not therefore restrict or interfere with that right in any way.

69. About 20 years earlier, Austria had enacted a new law on personal freedom. A drafting committee was currently discussing possible changes.

70. Mrs. HIGGINS said that she could not understand why articles 26 and 27 of the Covenant could not be brought into direct application in Austria. If the International Convention on the Elimination of All Forms of Racial Discrimination had been made operational in Austria by means of a Constitutional Act, she would like to know why the same procedure could not be applied in the case of the Covenant.

71. Austria had not reported on article 26. In that connection, she recalled that one of the problems for Austria in ratifying the Covenant had been article 26 because in certain respects equal treatment was provided only for Austrian citizens. In a general comment, the Human Rights Committee had found that the application of the principle of non-discrimination contained in article 26 was not limited to those rights which were provided for in the Covenant. It had observed however that not every differentiation of treatment would constitute discrimination, if the criterion for such differentiation was reasonable and objective and if the aim was to achieve a purpose which was legitimate under the Covenant. In that connection it could not, of course, be argued that, for example, freedom of expression should be limited only to citizens.

72. Mr. DIMITRIJEVIC shared the concern of Mrs. Higgins that in some areas Austrian law might not cover all the provisions of the Covenant.

73. In paragraph 69 of the report it was stated that Austria had not applied article 4 on the suspension of fundamental rights and that Austrian constitutional law did not contemplate the suspension of fundamental rights. He would like to know whether there was any possibility, in any circumstances, including non-political force majeure, in which article 4 would not be applied.

74. He would welcome clarification on the issue of compensation. Mr. Berchtold had said that, following a favourable decision by the Constitutional Court, the party seeking compensation from the State must go to a civil court and once again prove that he had suffered damage. Presumably, in a criminal case, the victim could apply to the criminal court. He would like to know the extent to which the decision of the Constitutional Court was binding on the civil court, which would then have to decide only on how much compensation should be paid.

75. Mr. LALLAH observed that, in the Lingens case, the views of the Committee would have been of assistance to the judges in interpreting a law which might be open to misinterpretation. There was a danger that, if the Covenant was not fully integrated in the Austrian legal system, judges might feel that it was not necessary to know about the Committee's opinions.

76. Mr PRADO VALLEJO, referring to Mr. Berchtold's statement that he knew of no case in which a judge in an administrative court had not been impartial, said that, in the Bellilos case, on 29 April 1988, the European Court of Human Rights had found that it was reasonable and legitimate to have doubts regarding the impartiality of a court made up of persons who might feel subordinate to the administration. That view provided reason to doubt whether impartiality could be guaranteed in all cases.

77. Mr. BERCHTOLD (Austria) said that, when the Covenant had been adopted, an expert committee had been set up to compare it with the European Convention on Human Rights and had drawn up a confidential report which had taken note of a number of differences in wording. Austria had three different instruments concerning human rights, namely, the Covenant, the European Convention and the Basic Law of 1867. Those concerned essentially the same rights but with different wording. Such a situation could complicate the practical application of provisions regarding human rights and that would not be advisable; Austria had therefore refrained from putting the Covenant on the same legal level as the other two instruments. He wished to emphasize, however, that it was not a question of according a secondary priority to the Covenant but only of making it easier to apply the law. Articles 26 and 27 were particular examples. The application of article 27, for instance, would have led to complications in implementing the 1955 provisions of Austrian constitutional law regarding minorities and might have necessitated application ex posteriori, which would have encountered legal obstacles. The problem could possibily be solved but it had been thought better to avoid the issue.

78. Similar considerations applied in the case of article 26. The principle of equality was guaranteed by constitutional law only to citizens. Foreigners were given equal treatment under the terms of the Constitutional Act in connection with the International Convention on the Elimination of All Forms of Racial Discrimination. There was a third provision, namely article 14 of the European Convention, which guaranteed equality to citizens and foreigners alike but only so far as rights specified in the European Convention were concerned. There were accordingly many divergent provisions.

79. All other provisions of the Covenant were applied equally because they did not differentiate between citizens and non-citizens. Those provisions of the Covenant were therefore applied in the same way for foreigners and citizens alike, as were the provisions of the European Convention.

80. In the days of the monarchy there had been an article providing for the suspension of fundamental freedoms and human rights. Following the breakdown of the monarchy, the old law had been incorporated into the legal order of the new Republic with the exception of that article. Thus, in 1918 the possibility of proclaiming a state of emergency had been abolished and the situation had remained unchanged.

81. Article 60 of the European Convention provided that nothing in the Convention should be construed as limiting or derogating from any of the human rights and fundamental freedoms which might be ensured under the laws of any High Contracting Party or under any other agreement to which it was a party. That article had been interpreted as meaning that, if the domestic situation was better than that contemplated in the European Convention, domestic law would prevail and therefore, in the case of Austria, the situation of an emergency case was excluded. It did not matter that a state of emergency was possible under the European Convention: it was not possible under Austrian domestic law. The same situation applied in the case of the Covenant.

82. There was no question of the Human Rights Committee's views not being taken seriously in Austria. It would be useful to domestic authorities, whether judicial or administrative, in interpreting the law, to know what the Committee had said in a general comment. The Austrian authorities would therefore review the Committee's general comments and would publish such comments as it deemed useful.

83. He asked Mr. Miklau of the Federal Ministry of Justice to comment on the questions regarding compensation and the independence of the judiciary.

84. Mr. MIKLAU (Austria) said that he would comment on the legal and practical situation in Austria concerning questions within the competence of the Ministry of Justice.

85. In the Lingens case, following the decision of the European Court of Human Rights, the Ministry of Justice had issued a decree to all judges and prosecutors incorporating the substance of the European Court's decision. The decree had been published in the Official Gazette of the Ministry of Justice as well as in professional magazines in which legal decisions of interest were reported.

86. That kind of information had been effective in that court decisions after 1987 had adopted ideas from the European Court and had included them as part of the reasoning in Austrian court decisions. The Oberschlick case might appear to represent an exception to that practice. However, although that case had been decided in 1990, the court decisions which formed its basis had been rendered in 1984, two years before the decision in the Lingens case, and the reasoning in the Lingens case had not therefore been available. Consideration had been given to the possibility of amending the criminal law but such action had not been thought necessary; instead, reliance had been placed on the Austrian courts' practice of interpreting the criminal law in the spirit of constitutional law which included the European Convention, article 10 of the latter being pertinent to the Oberschlick case.

87. On the issue of compensation, Mr. Berchtold had referred to cases where the Constitutional Court had declared that acts of an administrative authority had been contrary to the provisions of the Constitution and the Act regarding State liability and that the State was liable to compensate the victim of such an illegal act. There was, however, an obligatory mediation procedure before the applicant could file an action with the civil court. There had been a time-limit for that procedure of six months which had recently been reduced to three months. The purpose of the procedure was to try to find a solution between the alleged victim and the public authority which represented the State in matters of compensation. If no settlement was reached within three months under that procedure, the applicant was entitled to file an action with the civil court, which was free to decide whether or not the law had been violated by the public authority irrespective of whether there had been a previous decision to the effect that there had been such a violation. It could also provide compensation in cases where no such previous decision by the Constitutional Court existed such as, for example, in cases where an act contrary to law had occurred during criminal proceedings.

88. The CHAIRMAN announced that the Committee had completed its consideration of section I of the list of issues.

The meeting rose at 1 p.m.

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Forty-third session

SUMMARY RECORD OF THE 1099th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 October 1991, at 3 p.m.

Chairman: Mr. POCAR
later: Mr. AGUILAR URBINA

SUMMARY

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Austria

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GE.91-18066/4050B

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Austria (continued) (CCPR/C/51/Add.2; M/CCPR/91/38/Rev.2)

1. The CHAIRMAN invited the Austrian delegation to respond to the questions in section II of the list of issues to be taken up in connection with the consideration of the second periodic report of Austria (M/CCPR/91/38/Rev.2), namely:

> "II. Non-discrimination and equality of the sexes (arts. 2 (1), 3, 24 and 26)
>
> "(a) Please comment on the extent to which the criteria elaborated in article 2 (1) of the Covenant are covered by the provisions of article 7 (1) of the Constitution (see para. 64 of the report).
>
> "(b) Please provide information on measures taken to promote the participation of women in the political, economic, social and cultural life of the country and on the proportion of the sexes in schools and universities.
>
> "(c) Please provide information about the application of the special Federal Constitutional Act against racial discrimination mentioned in the initial report.
>
> "(d) In which respects are the rights of aliens restricted as compared with those of citizens?"

2. Mr. BERCHTOLD (Austria) said it was very difficult to make a comparison between the provisions of article 7 (1) of the Constitution and those of article 2 (1) of the Covenant which guaranteed to all individuals within the territory of States parties the rights recognized in that instrument, since article 7 of the Constitution referred only to citizens. Discrimination was prohibited by a constitutional law. Article 7 of the Constitution was closer to article 26 of the Covenant. Since virtually all the rights contained in the Covenant were also embodied in the European Convention on Human Rights it could be said that Austrian law necessarily contained provisions similar to those of article 2 (1) of the Covenant.

3. As for the information requested under question II (b), he explained that the competent Austrian authorities were transmitting to him a report on the measures taken to promote the participation of women in the life of the country; he would bring the report to the attention of the Committee as soon as it was received. For the time being, all he could say was that, according to figures for 1988-1989, about 50 per cent of children attending day-care centres and of students in primary and secondary educational establishments were female, and that one-third of all university students were women.

4. His delegation had practically no information concerning the application of the special constitutional law prohibiting racial discrimination for the simple reason that no court had ever had to deal with a complaint based on that instrument. It appeared that the Constitutional Court was at present dealing with a case under that law but it had not yet rendered its judgement.

5. Lastly, the right of foreigners to engage in certain professions was restricted - the civil service, the bar and certain commercial activities being prohibited to them. Moreover, as in most other countries of the world, foreigners needed a permit in order to work.

6. Mr. ANDO pointed out that, even if the provisions of article 7 (1) of the Constitution and those of article 2 (1) of the Covenant were not strictly comparable, it should be possible to identify certain differences in order to explain them. Those differences, which reflected the fact that the provisions of the two instruments were similar without actually duplicating one another could, in point of fact, create difficulties for Austria in the application of the Covenant.

7. Referring to the status of women, he would be grateful if the Austrian delegation could provide information on the salaries received by women since the documents of the International Labour Organisation suggested that equal pay was not guaranteed.

8. Lastly, he asked whether the duration of the alternative service required of conscientious objectors was the same as that of military service.

9. Mr. FODOR raised the matter of article 4 of the Covenant about which no question was asked in the list. Noting that, according to paragrah 69 of the report (CCPR/C/51/Add.2), "Austrian constitutional law does not contemplate the suspension of fundamental rights", he asked what law would be applied in an emergency situation. A situation of that nature was, by definition, unforeseeable and it might after all be necessary to suspend certain rights. Did Austria consider all the rights set forth in the Covenant as fundamental? For example, if an emergency situation were to arise in Austria tomorrow, would the principle of the freedom of movement be maintained or suspended?

10. Mr. BERCHTOLD (Austria), reverting to the comparison between article 2 of the Covenant and article 7 of the Austrian Constitution, said that the provisions of those two articles were not, in his view, comparable owing to the historical context in which article 7 had to be placed. Indeed, the examples given in article 7 of the Constitution - which, once again, corresponded more to article 26 of the Covenant - as possible reasons for discrimination were different, for historical reasons, from those in article 2 of the Covenant, since under the monarchy certain privileges had been based on class, religion or wealth.

11. As for the question of equal pay, it was true that in Austria, as in other countries, such equality was not guaranteed in the private sector or even, according to some sources, in the civil service. The Government had therefore established an Equal Pay Commission whose primary function was to look into complaints of wage discrimination. It was true that so far the

Commission, which always tried to arrive at an amicable solution, had not been very effective, although it was obvious that things could only improve slowly.

12. At the present time, the alternative service required of conscientious objectors lasted as long as military service. However, since there was talk of conscientious objectors no longer being required to prove the convictions that prevented them from performing military service, it was felt that a longer period of alternative service would be justified. Draft legislation along those lines was being considered and would constitute a new law.

13. Austria had no specific legislation on emergency situations. The Constitution authorized the Federal Government to issue decrees which had the force of parliamentary legislation but that possibility, which had been introduced in 1930, had never been used - even in the 1930s.

14. The CHAIRMAN invited the Austrian delegation to reply only to question III (a) (Right to life) in the list of issues to be taken up, since it had already answered question (b) at the previous meeting. Question III (a) read as follows:

> "Please provide information on rules and regulations governing the use of firearms by the police and security forces".

15. Mr. SZYMANSKI (Austria) said that the use of firearms by the police and security forces was governed by the 1969 law on the use of arms. Force could in general be used in cases of legitimate defence, to subdue a person resisting lawful action being taken by the police, to arrest a person who had himself used force and, to a lesser extent, to avoid a danger presented by something. Firearms could be used only in those four cases and provided that less dangerous means (warning, pursuit, physical force, technical devices, threats) could not be used if human life was in danger or if the person arrested was, in view of his previous record, regarded as particularly dangerous. In any event, the police officer was required to warn the person concerned that a firearm was going to be used. Firearms should be used only in a situation where an aggressive person had to be brought under control and their use should cease as soon as that situation no longer existed.

16. The CHAIRMAN invited the Austrian delegation to reply to the questions contained in section IV of the list of issues, namely:

> "IV. Liberty and security of the person and the treatment of prisoners and other detainees (arts. 7, 9 and 10)
>
> "(a) Have there been any allegations of violations of obligations under article 7 in the period under review and, if so, were they investigated and with what result?
>
> "(b) Are there any statistics about ill-treatment of persons remanded in custody? Is there a decrease or an increase of complaints about such ill-treatment? Have any particular measures been taken to prevent ill-treatment? Please describe the outcomes, advantages and disadvantages of the various complaints procedures.

"(c) Please provide information on the main problems addressed by the prisons commissions in their recent annual report and on follow-up actions taken, if any. (See para. 85 of the report).

"(d) According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. In what way does Austrian law comply with that requirement?

"(e) What is the average length of pre-trial detention?

"(f) Does the Austrian Criminal Procedure Act permit the use of confessions obtained through ill-treatment as evidence against the accused? Please describe the principles of the Austrian law on evidence.

"(g) Please provide information on deprivation of liberty in institutions other than prisons and for reasons other than crimes (e.g. in psychiatric institutions)."

17. Mr. MIKLAU (Austria) replied that there had indeed been allegations of violations of obligations under article 7 of the Covenant. Acts of torture and ill-treatment constituted crimes which should be prosecuted. In 1989 the Minister of Justice had issued a decree ordering that allegations that appeared to be justified should not only be the subject of a police inquiry but also a thorough investigation. He did not know how many allegations had been brought before the courts for it was too early for statistics to be available on the subject, and he was therefore unable to provide information on the results of the inquiries that had been carried out. However, in 1990, Amnesty International had published a report entitled "Austria. Torture and ill-treatment" in which 14 individual cases had been mentioned. In two of them the complaint had been considered justified, in another, a police officer had been found guilty, and in yet another, the complaint had been considered justified but it had been impossible to identify those responsible for the acts in question; in the other 10 cases, either the complaints had not been justified, proceedings had been dropped or police officers had been acquitted, having been given the benefit of the doubt. Recognizing the need to keep records of cases of the ill-treatment of detainees, the Minister of Justice had in May 1991 issued a decree stating that, from July 1991, statistics would be kept of allegations of illegal acts committed during police custody and other forms of detention. The Amnesty International report had been circulated in Austria together with a report of the European Committee for the Prevention of Torture, which had reached the Austrian authorities in November 1991 and which had given rise to a lively debate among the public at large as well as among professional circles; that had made the Ministry of Justice and government procurators ponder the question of the treatment of persons in police custody. Even before the publication of the Amnesty International report, the Minister of Justice and the Minister of the Interior had issued a decree containing strict orders concerning the right of persons who had been arrested to communicate with counsel, the possibility of warning trustworthy third parties of the arrest, and contacts with lawyers. Those two Ministers had also published a pamphlet on the rights of minors who were arrested and remanded in custody. That pamphlet, which had since been revised

and supplemented, was intended to inform young persons who had been arrested of their rights and to provide police officers with instructions on ways of protecting the rights of detainees.

18. The prison commissions referred to in paragraph 85 of the report were independent bodies (one in each Land) responsible for monitoring prison conditions and recommending ways of improving them. As a result of their work, proposals had been made with a view to humanizing visiting conditions, promoting training and work during the period of detention, translating in-house prison regulations into various other foreign languages, giving a greater number of detainees an individual cell during the night and enabling all detainees to telephone.

19. Referring to question IV (d), he drew attention to the two provisions of the Code of Criminal Procedure mentioned in paragraphs 108 and 110 respectively of the report (CCPR/C/51/Add.2) under which any person remanded in custody must, within 48 hours, be brought before the examining magistrate, by whom he must be questioned within 24 hours. In other words, any person who was arrested was normally heard by the magistrate within 72 hours. In certain exceptional circumstances (just before a weekend, etc.), the Code of Criminal Procedure stated that the time-limit for the questioning of the detainee could be extended up to 72 hours. In other words, any person who had been arrested was brought before a judge within 5 days at most. Should the judge have doubts about the lawfulness of the arrest or the reasons used to justify the person's detention, he was required to release the detainee. The judge's decision could be appealed.

20. Replying to question IV (e), he explained that the last reliable figure went back to 1988, when the average length of pre-trial detention was 76 days. It was probably less at the present time but that was probably unfortunately due to the increase in the number of persons held in pre-trial detention during the previous two or three years, which invariably had the effect of reducing the average period of pre-trial detention.

21. Referring to question IV (f), he said that the Austrian Code of Criminal Procedure permitted the use of confessions obtained through ill-treatment as evidence against the accused - or rather it did not prohibit their use. That, moreover, explained the Austrian Parliament's Declaration, made at the time the authorities had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to the effect that Austria would consider article 15 of the Convention as the legal basis for not permitting the use of statements which were found to have been obtained by torture. In that way, prohibition of the use of such evidence had become an integral part of Austrian criminal law. He added that that Parliamentary Declaration was simply a provisional measure, and that the authorities were aware that the Code of Criminal Procedure would have to be amended so as to include in it explicit provisions prohibiting the use of confessions obtained through ill-treatment as evidence.

22. In the view of the Austrian authorities, the wording of article 15 of the Convention against Torture was rather restrictive; indeed, the concept of torture was understood in the sense of the definition given in article 1 of the Convention, whereas article 7 of the International Covenant on Civil and

Political Rights reflected a broader concept. Moreover, article 15 of the Convention stated that it must be established that a statement had been obtained by torture. Very often, however, there were simply indications that that was so, and only very rarely could the fact be established.

23. In any event, the Code of Criminal Procedure was to be completely redrafted and the competent authorities intended to include in the new Code the broad interpretation contained in article 15 of the Convention against Torture. In the meanwhile, the Minister of Justice had issued a decree containing instructions addressed to government procurators on how article 15 of the Convention should be applied.

24. With regard to question IV (g), he said that the matter of confinement in psychiatric institutions had, for about 15 years, been giving rise to considerable discussion both among the authorities as well as in the media, and tangible results had already been obtained. For example, the number of cases of compulsory confinement had been reduced by two-thirds during that 15-year period. Moreover, a new law had entered into force on 1 January 1991 concerning the legal aspects and judicial supervision of confinement in a psychiatric institution. That law provided for new procedures for monitoring such confinement and contained provisions on the treatment of detainees and on the restriction of a number of their freedoms. Under that law, any person confined against their will in a psychiatric institution had to be brought before the competent civil court within two days. From that time, the examining magistrate had four days in which to question the person concerned. Any restriction of freedom of movement and communication with the outside world had to be based on a judicial decision, regardless whether the confinement was voluntary or not, since in certain cases of voluntary confinement it was subsequently necessary to restrict freedom of movement or communication. That new law had not been in force long enough for any conclusions to be drawn, but it was already apparent that the monitoring system and time-limits specified were practicable, contrary to what members of the medical profession and others believed. Moreover, there had been a further reduction in the number of compulsory confinements and the length of confinements also appeared to be declining.

25. Mr. Aguilar Urbina took the Chair.

26. Mr. MAVROMMATIS, referring to paragraph 73 of the report (CCPR/C/51/Add.2) asked whether the idea of "homicide at the request of the victim" included euthanasia practised by a doctor. The question of euthanasia was of considerable concern at the present time and he wondered whether it was also being discussed in Austria.

27. Referring to the problem of suicide, he noted that the general trend during the past few years had been to decriminalize that act and that, at the present time, greater emphasis was placed on efforts to find ways of preventing suicide; a large number of countries had accordingly and for various reasons decided not to penalize suicide attempts.

28. As for termination of pregnancy, he said it was unclear when it was legal and when it was illegal. Generally speaking, the report (CCPR/C/51/Add.2) gave the impression that Austria, like many other countries, was torn between

recognition of the right to life and that of freedom of choice for women. It would be desirable if all countries could eventually decide in favour of one or the other of those two rights. He wondered whether his impression was correct and requested clarification from the Austrian delegation on those various points.

29. With regard to article 7 of the Covenant, there was no doubt that, as in most other countries, legal provisions protecting the rights of citizens were not lacking in Austria. Yet there was not a single State, even European, that could boast of having put an end to torture, and it had to be admitted that it was practised in virtually all countries, and even in Europe. It was undoubtedly because Austrian society was open and liberal that a large number of complaints of torture or ill-treatment had been referred to the authorities. If torture and ill-treatment had not been eliminated it was not because of a lack of legal provisions but rather because procedures governing their application were inadequate.

30. He also asked whether the Austrian prison commissions cooperated - and if so, how - with the European Committee for the Prevention of Torture set up in accordance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. He requested the Austrian delegation for further details on the subject, with special reference to the mandates and achievements of those prison commissions.

31. As for the matter of confessions obtained through torture, he noted that there was a considerable difference between a voluntary confession and one obtained through torture, and felt that no confession obtained by constraint should be admissible. If evidence of that type was accepted torture could never be ended.

32. He also wondered which authorities were competent to investigate complaints of ill-treatment. In principle, when someone had been tortured at a police station it was the very same persons, namely, the police who were asked to investigate the matter; that probably explained why so few charges had been brought against persons accused of torture. That was a very real problem which should be carefully studied.

33. He wondered whether it might not be possible to appoint an independent government procurator responsible for at least examining serious complaints made against public officials who had allegedly practised torture. Progress must be made in the consideration of that question, since the success of efforts being made to discourage and avoid acts of torture depended on its solution.

34. Mr. SADI, referring to article 6 of the Covenant, asked whether the Austrian authorities had taken steps to curb pollution and to provide the population with a healthy environment. He also wondered whether effective campaigns had been launched to prevent AIDS, cancer or tobacco-related diseases, for example, which had a direct impact on the right to life.

35. With respect to article 7 of the Covenant, he noted that although the Austrian delegation had admitted the existence of complaints of violations of obligations under that article, it was clear that ill-treatment was not

institutionalized in Austria. However he would like to know whether the police were given guidelines on how to ensure respect for human rights and whether they were familiar with the provisions of human rights instruments such as the Covenant and the Convention against Torture. The reasons for torture and ill-treatment must surely be sought in the failure to inform the competent authorities properly.

36. He noted with regret that the Austrian authorities had entered a reservation with respect to article 10 of the Covenant and that the Government considered that minors could be held together with adults in detention centres without untoward consequences. That was all the more surprising since he knew of no other countries which subscribed to that view. He wondered what was the basis for the Austrian Government's affirmation that it was not detrimental for minors to be held together with adults, and whether it would not be possible to change that practice and withdraw the reservation with respect to article 10.

37. Mrs. HIGGINS, commenting on the Austrian delegation's replies to question IV (a), noted that although torture was not institutionalized in Austria it was nevertheless practised to some extent. However, she admired the courageous attitude of the Austrian authorities who had published a critical report of the European Committee for the Prevention of Torture, as well as their reply to the Committee's questions; their position was encouraging and constituted an example of transparency in the search for solutions to the problem.

38. She noted that the Austrian authorities recognized that monitoring machinery in that respect was inadequate and that they had issued decrees and guidelines in order to supplement it. She wondered what difference there was between those decrees and guidelines and what would be done to apply the Decree adopted in May 1991 with a view to keeping complete statistics of cases of ill-treatment during police custody.

39. She realized that the structural changes mentioned by the Austrian delegation would take time, but wondered whether it might not be possible to introduce forthwith a number of measures to protect the rights of detainees, such as the installation of audio and video recording equipment in premises where questioning took place.

40. Referring to the time-limit for the questioning of a detainee by the judge mentioned in question IV (d), she asked whether the Austrian authorities considered the maximum period of five days provided for in certain special circumstances satisfactory and whether thought had been given to reducing that period to three days, which would be more in line with the provisions of article 9 (3) of the Covenant. She would also appreciate confirmation that the period was not longer for persons suspected of acts of terrorism.

41. With regard to question IV (f), she pointed out that the Committee's general observations were very clear on that point: evidence obtained in a manner that violated the provisions of article 7 of the Covenant was inadmissible. Moreover, she assumed that the text of those general

observations had prompted the Austrian authorities to include in their national legislation a broader interpretation of article 15 of the Convention against Torture, in view of article 7 of the Covenant.

42. Lastly, with respect to question IV (g), she said she was gratified by the information provided by the Austrian delegation and asked whether there was any procedure that provided for the review of compulsory confinement decisions.

43. Mr. POCAR resumed the Chair.

44. Mr. MULLERSON, asked whether the European Committee for the Prevention of Torture had detected in the reply of the Austrian authorities to its report any examples of violations of the provisions of the European Convention for the Prevention of Torture.

45. He also wondered, with reference to article 9 of the Covenant, at what stage a detainee was allowed to contact a counsel.

46. Mr. WENNERGREN, referring to an event that had been extensively discussed by the media, namely, the murder of several patients by a nurse in a hospital, asked what steps had been taken by the authorities to prevent the recurrence of such cases.

47. He was concerned by the number of complaints of ill-treatment, and even more by the fact that only 3 of the 14 cases mentioned by the Austrian delegation had resulted in charges being brought. In the other 11 cases either proof had been lacking or it had been impossible to identify those responsible. There was obviously no question of reducing the burden of proof and police officers, just like any other citizens were entitled to be protected. Yet it was a fact that ill-treatment was an evil which was taking root and that a spirit of solidarity appeared to bind members of the police force who remained united in the face of the accusations directed against them. In most cases it was the word of the complainant against that of a public official, since police officers did not generally give evidence against their colleagues and the authorities often covered up what they had done. The question was, therefore, how the evil that had obviously gained ground among police forces could be eradicated. Perhaps a system of impartial witnesses who would be present during the questioning should be developed. That method was used in Sweden - admittedly without much success - but on balance it was not completely negative. The idea of installing video and audio recording equipment suggested by Mrs. Higgins should be also explored. In any event it was clear that the training of members of the police or gendarmerie was not enough by itself to prevent ill-treatment.

48. Mr. FODAR, referring to article 18 (6) of the Code of Criminal Procedure referred to in paragraph 85 of the report, requested information on the precise powers of the prison commissions, namely, whether they were authorized to appeal directly to investigating bodies in the case of a serious irregularity or emergency situation. It was his understanding that those commissions could monitor the treatment of detainees in penitentiary

establishments in general, but he wondered which authority was responsible for the systematic monitoring of the treatment of persons held in psychiatric institutions or reformatories for juvenile delinquents.

49. Mr. DIMITRIJEVIC was under the impression that the difficulties encountered during inquiries into acts of brutality committed by the police were similar to those encountered in the investigation of negligence on the part of doctors, since their esprit de corps often made it impossible to obtain the necessary information. Obviously, therefore, it would be better if investigations could be conducted by an independent body. Moreover, it seemed that the victims of ill-treatment or police brutality were in many cases dissuaded or prevented from obtaining justice and redress. Indeed, since there were no longer any prisoners of conscience in Austria - which was most gratifying - common criminals were denied the support that they would otherwise have enjoyed in the same way as prisoners of conscience. Moreover it appeared that it was rather risky for victims of ill-treatment to institute proceedings, since that implied the exact identification before a criminal court of the police officer responsible, and the presumed victim who was unable to identify the person responsible could be prosecuted for defamation and would be liable to a sentence of up to four years' imprisonment. Moreover, the presumed victim against whom criminal proceedings were not brought was not entitled to free legal assistance, although he was required to be represented by a lawyer whose services were expensive. He requested clarification of the various points he had raised, and would also like to know whether Austria was thinking of adopting a system under which judges would refrain from imposing penalties on the basis of evidence which they suspected had been obtained illegally.

50. The CHAIRMAN invited the Austrian delegation to reply to the questions put by members of the Committee.

51. MR. MIKLAU (Austria), replying first to the questions put by Mr. Mavrommatis, said that attempted suicide had ceased to be an offence a long time ago, although criminal proceedings could be brought against anyone who helped a person to commit suicide or committed homicide at the request of someone else. The question of euthanasia was being widely discussed in Austria, just as in most countries of the world. The prevailing opinion was that, first of all, "passive" euthanasia in which medicaments that could possibly prolong the life of a patient during the terminal stages of his illness were not administered was regarded as a matter for the judgement and personal competence of the medical profession. Secondly, members of the medical and legal professions also accepted, to a certain extent, the practice that consisted in the administration of medicaments to relieve a patient's suffering, the doctor being aware that there was a danger of cutting short his life thereby. Thirdly, "active" euthanasia was regarded as illegal in Austria and contrary to medical ethics, which did not, however, mean that cases of that kind never occurred. Lastly, he explained that termination of pregnancy during the first three months was not punishable by the law and that after the first three months very specific conditions had to be met for it not to be punished. However, the fact that termination of pregnancy was not punishable did not necessarily mean that it was legal, and the matter was being widely discussed by criminologists, ethics specialists and theologians.

52. Replying to a question put by Mr. Sadi, he said that the prevention of environmental pollution was the subject of considerable debate in political and administrative circles, and that the Code of Criminal Procedure had been amended in 1987 with a view to imposing greater penalties for offences committed in that respect. However, practice had proved that the question was a delicate one, since the relevant legislation was based essentially on administrative provisions in force and on case law. Discussion of the matter was, however, continuing and it was an issue about which the Austrian people was particularly senstive.

53. The question of transmissible diseases, namely, AIDS, had for several years been of serious concern in Austria and a number of measures in the legal field as well as in the field of advisory services had been taken to improve the situation of those suffering from it. A system under which cases of AIDS were registered had been introduced but the principle of anonymity was strictly respected. Moreover, steps would be taken to provide drug addicts with substitute products and the article of the Code of Criminal Procedure that made the prostitution of homosexuals punishable had been repealed in 1989 since its provisions prevented the application of preventive measures and steps to combat the propagation of AIDS.

54. Referring to the reservation entered by Austria in connection with article 10 of the Covenant, he explained that although Austria recognized the principle of the separation of young untried prisoners and adults, the principle itself was not necessarily applied strictly. Austrian legislation on juvenile delinquency had been amended in 1988, when the age of criminal responsibility had been raised from 18 to 19. Consequently, the strict application of that principle would mean that a young person of 18 could not share his cell with someone of 19, although that type of situation - apart from exceptional cases - was not regarded as harmful. Furthermore, the steps taken to avoid the imprisonment of juvenile delinquents in general had yielded positive results and there were now barely more than two or three young prisoners in each penitentiary establishment; moreover, in recent years the total number of juvenile delinquents serving prison sentences had never exceeded 50.

55. The Austrian Government intended to amend the Code of Criminal Procedure in order to bring it into line with the decisions of the European Court of Human Rights, and in that way to reduce from five to four days the maximum period for which a person who had been arrested could be held before appearing before a judge. He also explained that Austrian legislation contained no special provisions concerning terrorism because, fortunately, no terrorist act had yet been committed by an Austrian terrorist - which of course did not mean that such acts originating abroad could not occur on Austrian territory.

56. With respect to confinement in psychiatric institutions, the law provided for special procedure under which the court had to render its decision within eight days, and not only the person concerned but also the director of the medical service of the institution in which he was placed and the members of his family could appeal the decision within 14 days. The case was thus brought before the court which handed down its decision in the following two weeks. A new law provided better guarantees of the rights of persons detained in psychiatric hospitals and patients detained against their will.

Accordingly, counsels appointed within each institution were responsible for representing detainees before the courts and helping them to enforce their rights. The results so far had been encouraging despite inevitable conflicts due to differences of opinion between medical staff and the counsels of detainees.

57. With respect to allegations of ill-treatment by the police during custody and the decrees of the Minister of Justice on the subject, he recalled that, in accordance with the decision adopted by the European Committee for the Prevention of Torture, the Austrian Government had agreed to publish its report on ill-treatment and other illegal acts, as well as the observations made in that respect, which it regarded as a step forward in the dialogue between the Austrian authorities and the European Committee, the objective being to improve guarantees and procedures in efforts to prevent ill-treament. Moreover, under the Decree of 15 September 1989 the investigation was entrusted to an independent examining magistrate who was required personally to hear the witnesses and the police officer under suspicion and to collect all necessary evidence. Austrian judges attached great importance to the principle of the independent evaluation of evidence which did not, however, mean that the principle of inadmissibility was not applicable. In that respect, the Code of Criminal Procedure prohibited the use of statements made by a witness during the examination proceedings if he subsequently refused to testify during the trial. The judge kept such evidence in the file although, according to Austrian legislation, certain evidence could not be used during the proceedings.

58. The question of the use of evidence obtained through a confession raised serious theoretical as well as practical difficulties. Discussion of the matter was continuing, and one of the solutions envisaged was to make a distinction between cases in which human rights had obviously been violated - such as torture - and in which the use of evidence could be regarded as illegal, and other cases in which fundamental rights had not been violated and in which the evidence obtained could be used in certain circumstances. However, no definite conclusions had yet been arrived at in the matter.

59. In reply to a point raised by Mrs. Higgins, he said that there was no real difference between decrees and guidelines, the word "decrees" being a formal term used to designate the instructions issued by the Ministry of Justice or the Ministry of Interior, and the term "guidelines" designating in a specific manner the measures to be taken to apply such decrees.

60. The question of monitoring the questioning conducted by the police during the 48 hours following the arrest of a suspect, which was directly related to article 7 of the Covenant, was being widely discussed in connection with the reform of the Code of Criminal Procedure that was under way. Under the former Austrian Code of Criminal Procedure of 1873, witnesses attended hearings before the examining magistrate, as was still the case in Sweden, which had a system of "citizen witnesses". Under the reform that was envisaged, the person concerned would have the right to request a trustworthy third party, lawyer or other, to be present during the questioning. That provision, which was still being studied, was nevertheless giving rise to a great deal of controversy. Moreover, according to a new provision introduced at the beginning of October, any person could request the application of similar

procedure in connection with any contact with members of the police. A provision of the same kind could therefore be introduced into the Code of Criminal Procedure in connection with questioning conducted by the police. As for the audio or video recording of police questioning, it could undoubtedly be envisaged in the future but was not yet current in the European democracies, and its application raised certain difficulties. In any event, the treatment of suspects by the police during questioning did not depend only on the existence of certain legislative provisions but above all on the spirit in which such provisions were applied. On the basis of the instructions issued by the Minister of Justice and Minister of the Interior, recent administrative reforms and the current reform of the Code of Criminal Procedure, as well as the work of the Committee on the Prevention of Torture set up under the European Convention for the Prevention of Torture and the reports of Amnesty International, the Austrian authorities were endeavouring to improve a situation that left much to be desired, as the Austrian Government had itself recognized in its observations on the report of the EEC Committee on the Prevention of Torture. In any event, reform was under way both on the legislative level as well as in practice.

61. The four nurses who had killed several patients in a hospital in the Vienna region and who had been referred to by Mr. Wennergren had been found guilty by the court of first instance and were appealing. Administrative measures had been taken to prevent something similar from happening again, by the stricter assignment of functions among highly-qualified nursing personnel and less-qualified nursing personnel (the four persons in question had belonged to the latter category). However, as it was difficult to find nursing personnel in Austria, greater numbers of foreign personnel - mainly from the Philippines and North Africa - had to be used. Two administrative commissions had been set up to examine such problems.

62. Mr. SZYMANSKI (Austria) said that the audio or video recording of questioning was not really the ideal solution, inasmuch as certain detainees could always say that the procedure had not been used correctly in their case. It would be better to stay with the recording of statements in writing in the presence of a witness - whether lawyer or trustworthy third party. It was also obvious that the Austrian police should be provided with the resources they needed to acquire the necessary technical equipment.

63. With respect to article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which had already been referred to by Mr. Miklau, the benefit of the doubt had previously been given to police officers accused of torture, and when it was impossible to prove the alleged acts the officers in question had been acquitted and the victim tried. Henceforth, the accused would be given the benefit of the doubt. Mr. Sadi had also rightly raised the very important question of the training of police officers in human rights matters. The Ministry of the Interior had recently taken action along those lines, but since the training of police officers lasted two years a little more time was necessary before the results would be known.

64. The CHAIRMAN said that the Committee had thus completed its consideration of section IV of the list of issues to be taken up in connection with the consideration of the second periodic report of Austria. He therefore proposed going on to section V which read as follows:

"Right to a fair trial (art. 14)

"(a) What criteria are applied in selecting members of a jury?

"(b) Please provide information on the average length of criminal cases.

"(c) Have there been any applications for payment of compensation in accordance with the Criminal Compensation Act and, if so, with what result?

"(d) Please comment on the reasons for making reservations under article 14 of the Covenant? Is any consideration being given to withdrawing the reservations?"

65. Mr. MIKLAU (Austria) explained, in connection with question (a) that under a new law that had entered into force on 1 January 1991, members of juries and assessors were no longer selected by a commission consisting of members appointed by various Austrian political parties. They were now chosen in a random manner, if possible by computer systems. If no such systems were available, a number of persons were chosen by lot and their names communicated to the president of each criminal court, who again selected names by lot and drew up a list of those who would be requested to act as jurors or assessors.

66. Referring to question (b) concerning the average length of criminal cases, he said that although the Austrian delegation did not have any precise statistics available, he thought that it was rather shorter than in other countries. Some cases of course went on for a very long time, and it was for that reason that a monitoring system had been introduced in 1990. Under that system, it was felt that a case was exceptionally long if the court had not handed down its written decision within two months after the end of the trial. That, moreover, constituted the permissible maximum in the sense that the law specified two weeks in principle. It was also considered that a case was particularly long if over a year had elapsed before the trial began. On 1 October of each year the Ministry of Justice was informed of exceptionally long cases, details being provided in respect of various stages of the proceedings. On 1 April of each year the presidents of the courts of appeal reviewed such cases, which were again re-examined six months later. Although the Association of Austrian Judges had initially taken issue with the system which, in its view, could undermine the independence of judges, it had eventually recognized its efficacy.

67. The question of the payment of compensation referred to in question (c) arose in three cases, namely, in the event of unlawful detention, pre-trial detention and subsequent failure to bring charges, and the acquittal at the end of a second trial of a person who had been sentenced and imprisoned. Statistics for the previous eight years revealed that there were on average 5 to 24 cases of that kind per year, 90 per cent of which came under the pre-trial detention category. On average, complaints had been found to be

justified in two-thirds of cases and the victim had received compensation. Between 1983 and 1989 the total amount paid in compensation had varied from 460,000 to 540,000 schillings, depending on the year in question. In 1990 it had amounted to about 700,000 schillings, and for the first nine months of 1991 to 550,000 schillings. The amount was obviously increasing whereas the number of applications for payment of compensation remained unchanged.

68. As for question (d) concerning Austria's reservations in connection with article 14 of the Covenant, he explained that those reservations were explained essentially by the principle that a person could not be tried twice for the same offence. Since criminal proceedings were invariably of a two-tier nature, could it really be said that article 14 (5), had been violated if a person received a more severe sentence by a court of second instance? It had simply been out of caution that the Austrian authorities had entered that reservation in ratifying the Covenant and could envisage withdrawing it if the Committee or any other United Nations body provided them with the necessary assurances in that connection.

69. Mr. SADI said that he was still concerned by Austria's reservations in connection with article 14. The question was not one of appealing a judgement but of reopening a case in which a final judgement had already been handed down; it raised the danger of double jeopardy and would therefore apparently constitute a violation of article 14 (7).

70. Mr. MAVROMMATIS felt that many members of the Committee did not share Mr. Sadi's point of view. Personally he failed to see how the danger of double jeopardy could arise if the accused or the prosecution appealed a sentence.

71. Mr. SADI said he had not been referring to the right of appeal but to a new judgement after all remedies had been exhausted.

72. Mr. MIKLAU said that only in exceptional cases was a trial reopened following a final judgement. The dozen cases of that kind that occurred each year implied, for the most part, the submission of new evidence. In practice, the second judgement was almost always favourable to the accused; possibly only once in a period of 10 years had the contrary happened. The Austrian authorities wished to keep that option of a second judgement simply because, for example, a person acquitted of a murder might subsequently boast that he had in point of fact committed that murder. In any event, he thought that the legal systems of other countries also made provision for that type of eventuality.

73. The CHAIRMAN said that the Committee had completed its examination of section V of the list, the question of Austria's reservations in respect of article 14 remaining open pending instructions by the Committee.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1100th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 25 October 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR URBINA

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The meeting was called to order at 10.15 a.m.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that it was a great pleasure to be able to welcome the Committee to the Palais des Nations for its forty-third session and to have Mr. Herndl back as one of its members.

2. Before proceeding to his customary review of the latest developments and activities of special interest in the human rights field, he wished to report briefly on some relevant aspects of the recently published report by the Secretary-General on the work of the United Nations.

3. In that report, the Secretary-General had forcefully reaffirmed the close connection between human rights and peace and the importance of human rights for the development of the United Nations. The Secretary-General had stated that the shift in public attitudes and the growing international interest in universalizing a regime of human rights reflected a more focused awareness of one of the requirements of peace and that there was no doubt that the violation of human rights imperilled peace, human rights having become "one of the keystones in the arch of peace". While recognizing the persistence of a gulf between human rights aspirations and what he had termed "the barbaric realities of the world in which we live", the Secretary-General had cautioned against belittling the positive results that had already been achieved, including the development of procedures for examining and discussing human rights problems and violations by the Commission on Human Rights and the various treaty monitoring bodies. Much had already been done to lay the foundations of a universal culture of human rights, and the raised level of consciousness of human rights around the globe was due in no small measure to the thought and work that had been devoted to that cause by the United Nations and those who had taken inspiration from it.

4. The Secretary-General had also discussed at some length the question of the relationship between human rights and national sovereignty and had noted that the principle of non-interference with the essential domestic jurisdiction of States could no longer be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity.

5. The Committee undoubtedly shared his own deep sense of satisfaction over those emphatic reaffirmations by the Secretary-General of the vital role of human rights in international affairs and would take his comments as a source of encouragement for its future endeavours.

6. With regard to recent human rights-related developments, it was a great pleasure to be able to report that Albania, Estonia, Grenada and Israel had now acceded to the Covenant, bringing the total number of States parties to 99, and that Australia, Estonia, Ukraine and the Soviet Union had acceded to the Optional Protocol, bringing the total number of States parties to that instrument to 58. In addition, the Soviet Union and Zimbabwe had recognized

the competence of the Committee under article 41 and Norway had ratified the Second Optional Protocol aimed at the abolition of the death penalty. Moreover, on 8 August 1991 the President of the United States had transmitted the International Covenant on Civil and Political Rights to the United States Senate for its advice and consent to ratification.

7. The Preparatory Committee for the World Conference on Human Rights had held a very successful first session in Geneva during September. In his opening statement to that Committee in his capacity as Secretary-General of the World Conference, he had suggested that by mobilizing the energy and efforts of all human rights bodies, non-governmental organizations and individuals, the preparatory process should serve forcefully to reaffirm and safeguard the international standards established by the United Nations, including those set forth in the Covenant. Those high standards belonged to humanity's common heritage and had to be passed on, in strengthened form, to coming generations. The process should also serve to promote the universal application of those standards, ensuring that no individuals were excluded from the protections they provided. Lastly, he had suggested that the process should serve to enhance the effectiveness of national and international efforts aimed at the full implementation of such standards and should lead to actual improvements in the quality of life of people around the world.

8. The Preparatory Committee's session had been devoted largely to procedural matters. As its report indicated (A/CONF.157/PC/13), it had decided, inter alia, to propose to the General Assembly that the World Conference should be held in Berlin for a period of two weeks in 1993 and that the Preparatory Committee should hold three further sessions - two during 1992 and the third in 1993. The Committee had also suggested that the Secretary-General should be requested to prepare a limited number of short analytical studies and to prepare or update the main reference documents and publications. It had also reaffirmed that the chairmen of the treaty bodies or their designated representatives should take an active part in the work of the Preparatory Committee and the World Conference.

9. The preliminary comments and recommendations adopted by the Human Rights Committee in July had been brought to the attention of the Preparatory Committee and had been well received. The Committee had been most ably represented by its Chairman, Mr. Pocar, whose extremely valuable and interesting statement had been highly appreciated by delegations to the Preparatory Committee. Mr. Pocar would undoubtedly share some of his observations on the Preparatory Committee's first session with the Human Rights Committee in due course. Any additional comments that members might wish to contribute would certainly be received with great interest.

10. Turning to the activities of some of the other human rights treaty bodies, he said that the Committee on the Elimination of Racial Discrimination, at its fortieth session in August 1991, had decided to designate six of its members to be responsible for following developments relating to the work of the other human rights treaty bodies as well as the Commission on Human Rights, the Sub-Commission, and the European Parliament, and to keep the Committee appropriately informed. It had also proceeded, on the basis of reports that had already been considered at an earlier stage and

additional information that had become available in the interim, with a review of the implementation of the provisions of the Convention by 12 States parties whose reports had been long overdue. Although one of the States parties concerned had sent a representative to the Committee, the review of implementation in the other 11 countries had taken place in the absence of State party representatives.

11. The first session of the Committee on the Rights of the Child had been held in early October 1991. It had been able to complete action on a number of key organizational matters, including the adoption of its rules of procedure and the reporting guidelines for initial reports. It had also considered its future methods of work under the relevant provisions of the Convention and explored the role and potential contribution of the various cooperating agencies and organizations in that regard. The Committee on the Rights of the Child planned to hold its second session from 28 September to 9 October 1992 and had expressed the wish to hold at least two sessions per year in future, preceded by a pre-sessional working group. The Committee's interim report to the General Assembly, which included its reporting guidelines and which he believed the Human Rights Committee would find of very real interest, would be made available during the current session.

12. With regard to recent advisory services activities, the Centre had organized or helped to organize several workshops or training courses in recent weeks, receiving in that effort the welcome collaboration of some members of the Human Rights Committee. They had included a workshop on human rights instruments and reporting obligations at the end of August in Moscow, a national workshop for Supreme Court judges in September in Bucharest, and a meeting on national institutions for the promotion and protection of human rights at the beginning of October in Paris. The workshop in Moscow was of particular significance since it had been organized just a week after the attempted coup and had served as a timely demonstration of the international community's continuing interest in supporting efforts to promote the observance of human rights and fundamental freedoms in the Soviet Union. The meeting in Paris, which had involved some 80 participants including representatives of national human rights institutions, non-governmental organizations and intergovernmental organizations as well as ombudsmen and mediators, had provided an opportunity to stress once again the need for action on human rights at the national level, if respect for such rights was to have a real chance to take root in the political and legal culture of a country and to become a permanent feature of the local system.

13. The Centre was planning to hold a national training course on international standards in the field of human rights and national legislation in Ulan Bator, Mongolia, at the end of October. The Covenant was being translated into Mongolian with the aim of bringing about changes in the Constitution. Lastly, a workshop on regional human rights arrangements for Asian and Pacific countries was to be held in Jakarta in December.

14. In conclusion, wishing the Committee every success with its heavy schedule of work, he assured it of his full support and assistance, as well as that of his colleagues in the Secretariat.

15. The CHAIRMAN thanked Mr. Martenson for his statement and his readiness to assist the Committee in its activities. Mr. Martenson's report on international developments in matters relating to the Covenant and the Optional Protocol, as well as the World Conference and the procedural aspects of the activities of other treaty bodies, was of great interest to the Committee.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Austria (CCPR/C/51/Add.2) (continued)

16. The CHAIRMAN suggested that the question left in abeyance from section V of the list of issues on the compatibility of Austrian legislation with article 14 of the Covenant should be postponed for the moment in order to give the Committee time to discuss the procedural aspects involved in offering an interpretation to the Austrian Government with a view to the withdrawal of its reservations. He further suggested that the remaining parts of the list of issues might be divided into two, sections VI, VII and VIII being considered together, followed by section IX.

VI. Freedom of movement and expulsion of aliens (arts. 12 and 13)

Please provide additional information concerning the relevant judicial or administrative procedures for appeal against an order prohibiting residence. Does such an appeal have suspensive effect?

VII. Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (arts. 18, 19 and 20)

(a) What are the modalities defined by law applicable to conscientious objectors who are exempted from military service and must perform alternative service? (See para. 13 of the report).

(b) Please indicate what practices are not considered consistent with public order or public morals. (See para. 198 of the report).

(c) How is the right to seek information envisaged in article 19 (2) of the Covenant guaranteed?

(d) Please explain whether the application of article 111 of the Austrian Criminal Code has given rise to any difficulties with regard to the implementation of article 19 of the Covenant. (See para. 187 of the report).

(e) Please describe what limits Austrian law puts to the right to seek and to impart information. Please expand the reply to cover also the right to peaceful assembly according to article 21, particularly with regard to assemblies aiming at imparting information.

VIII. Freedom of assembly and association (arts. 21 and 22)

(a) Have there been any cases of meetings broken up by the authorities during the period under review and, if so, for what reasons? (See para. 222 of the report).

(b) Please provide examples, if any, of prohibited formations or dissolutions of associations. (See paras. 228 and 231 of the report).

17. Mr. BERCHTOLD (Austria), replying to section VI, said that the substance of article 13 of the Covenant had been incorporated into the Seventh Protocol to the European Convention on Human Rights and consequently into Austria's constitutional law. Article 1 of that Protocol differed from the Covenant on the particular point at issue, namely, whether an appeal had suspensive effect; it stated in paragraph 2 that an alien might be expelled before the exercise of his rights under paragraph 1 (a), (b), and (c) of article 1 when such expulsion was necessary in the interests of public order or for reasons of national security. The reasoning behind that provision was that during the negotiation and consideration of the Seventh Protocol it had been agreed that there should in principle be a suspensive effect in cases of expulsion, that the individual concerned should have the right to submit reasons against his expulsion, to have his case reviewed and be represented, and that he could not be expelled before he had exercised those rights. However, some exceptions had been considered necessary in cases involving public order and for reasons of national security.

18. Referring to section VII of the list of issues and to the general question of freedoms he said that, as he understood it, a freedom was something which an individual had and could enjoy without interference by the State but whether or not and to what extent freedoms were exercised depended on individual initiative, ability and means. While it might be argued that there was an obligation on the part of the State to create a situation in which individuals could exercise such freedoms, that argument was dangerous because it implied a degree of interference by the State; the greater the level of the State's obligation the greater the degree of State interference and action which might run counter to human rights interests. It was therefore extremely difficult to say how far State obligations should go. In a recent case involving Austria, the European Court of Human Rights had held that freedom of assembly not only meant that a State should not interfere if people assembled in freedom but also that, where there was a counter-demonstration, the State was obliged to protect one assembly against the other so that the two could be held freely. In that particular case the Austrian authorities had been deemed to have fulfilled their obligations.

19. As far as question (a) was concerned, conscientious objectors had hitherto been subject to individual examination by a commission whose decision could be appealed before the Constitutional Court. It was now proposed to amend that system on two points. First of all, conscientious objectors would be believed from the outset, and would no longer be subjected to examination. However, to avoid any abuse of such rights, alternative service would be two months longer than military service.

20. Question (b) referred to an expression reproduced from the Treaty of St. Germain. He did not know exactly what the drafters of that Treaty had had in mind when referring to practices not inconsistent with public order or public morals, but in the context of freedom of religion at least there were certain obvious examples from the pact, such as human sacrifice.

21. Turning to question (c), while the freedom to seek information existed, as far as he knew there was no obligation to provide information, except in the case of the public authorities, which were required to give certain information on request. In principle, people were free to seek any information they wished: there was no restriction on the import of newspapers or books, for example, nor was there any jamming of radio or television broadcasts. It might therefore be said that complete freedom existed in that respect in Austria.

22. Referring to question (d) an answer to a question on the Lingens case had been given at a previous meeting. Difficulties had arisen in the past as a result of a certain interpretation of article 111 of the Criminal Code, but it was now thought that the criminal courts in Austria would in future apply that article in the light of the judgements rendered at Strasbourg in the Lingens and Oberschlick cases.

23. In reply to question (e), Austria was a free society in which individuals could seek information wherever they wished provided that no means contrary to the Penal Code, such as stealing were used, the same was true of imparting information. Quite clearly, however, it was more difficult to impart information than to seek it and that was largely a matter of the imagination and initiative of the individual. The State did not have any particular obligation to ensure that people could impart information.

24. Mr. Aguilar Urbina took the Chair.

25. Mr. SZYMANSKI (Austria), replying to the questions under section VIII, said that as far as question (a) was concerned, freedom of assembly was guaranteed in Austria in accordance with article 21 of the Covenant. Twenty-four hours' notice of a meeting had to be given to the magistrates, who could ban the meeting if they considered it was not in conformity with the law. Recent cases of meetings being broken up concerned the National Socialist Party which was forbidden to meet in Austria under the constitutional law.

26. Turning to question (b), he said that there, too, the freedom to form associations was guaranteed and it was very rare for any ban to be placed on their establishment. Recent cases had related to the creation of neo-Nazi groups and other unconstitutional formations.

27. Mr. PRADO VALLEJO said that an issue of concern to many people, particularly in the third world, was the anti-immigration policy or feeling among the public in a number of European countries against people seeking political asylum or against immigrants who had spent many years in the country. He requested information concerning Austria's policy on immigration and the granting of asylum, in which it had been known for its generosity in the past.

28. He had noted that no private individual or group could receive a licence to set up a television or radio station in Austria, and he asked whether that was deemed to be compatible with articles 18 and 19 of the Covenant, which guaranteed the right to freedom of expression. What was the Government's policy in that regard and did it intend to amend the legislation on the subject?

29. With respect to the removal of posters or leaflets during peaceful demonstrations, it had no doubt been claimed that such literature could lead to a breakdown in public order, but that was a highly subjective view, and he would welcome further information on the subject.

30. Mr. ANDO said that he would like to have some explanation of article 188 of the Criminal Code, reproduced in paragraph 196 of the report, which stated that whoever publicly discredited a person or object worshipped by a church or religious community recognized in Austria, or a belief, custom or institution recognized by law and connected with such church or religious community, or ridiculed such persons or objects, under circumstances in which his or her attitude was likely to cause justified disapproval, would be liable to a prison term of up to six months or a fine of up to 360 times the daily rate. The term "justified disapproval" could be given differing interpretations, and he would be interested to know how it was construed in Austrian legislation.

31. He had noted that private ownership of newspapers and magazines was allowed in Austria. With such private ownership, there could sometimes be a monopoly, and he would therefore be interested to know whether there was any policy in Austria against the monopolization of the mass media. He noted from paragraph 208 of the report that subsidies were granted to smaller newspapers that were of particular importance in shaping political opinion. He would welcome more information about the criteria and the procedure for granting such subsidies.

32. Virtually no information was given in the report as to the ownership and management of television and radio broadcasting establishments. Noting that such forms of mass media were becoming increasingly important, he wondered whether they were completely monopolized by the State and, if so, how the programmes were controlled and whether there was any prospect of privatization.

33. It was stated in paragraph 219 of the report that electoral meetings and discussions between electors and their elected deputies were exempt from the provisions of the Meetings Act provided that they took place at the time of the elections and not in the open air. He asked why open-air meetings were not allowed. He also wished to know why article 8 of the Meetings Act, referred to in paragraph 221, stated that aliens were not allowed to promote, organize or preside over any meeting for the discussion of public affairs.

34. Mrs. HIGGINS observed that the question of Government monopoly of television and radio stations was currently before the European Commission of Human Rights. Whether or not it was considered to constitute a violation of the Covenant would depend on the replies to the questions raised by Mr. Ando with respect to control and management, the way in which control was exercised and whether or not completely free speech was allowed. Even if the answer to

those questions was in the affirmative, a Government monopoly could lead to possible violation, and she therefore wished to know whether the issue was under consideration.

35. She associated herself with Mr. Ando's concern about the restriction against aliens in the conduct of meetings on public affairs. In that connection she mentioned Speakers' Corner in London, where people of all races and nationalities assembled and vigorous discussion frequently took place. The right to hold such meetings was an essential part of democracy which a State should be able to tolerate. She therefore wished to know why Austria considered that there was a need for their restriction.

36. With respect to article 188 of the Criminal Code, which provided for penalties in cases in which a belief, custom or institution was ridiculed or discredited, the case law of the European Court of Human Rights rightly provided that freedom of speech must include freedom to express ideas that were sometimes shocking and offensive. One permitted limitation to article 19 of the Covenant referred to respect of the rights or reputations of others, but there appeared to be no provision for the right not to be offended, and she therefore wished to know what legal basis was deemed to exist in the Covenant for article 188 of the Criminal Code. It appeared at first sight from the terms of that article that anyone in a similar position to that of Salman Rushdie would be more likely to be imprisoned by the police than protected by them.

37. She had been very interested by the Austrian delegation's explanation concerning the proper understanding of the Lingens and Oberschlick cases and the fact that judges had been instructed with respect to the interpretation of article 111 of the Criminal Code. If everything related to article 111 of the Criminal Code was dealt with on the basis of interpretation, there would be endless reference to the European Court or, in the case of the Optional Protocol, to the Committee. Article 111 itself appeared problematical. It went further in terms of restrictions than what was usually found necessary to protect the reputation of people in public life, and its terms were far closer to those of the former Marxist Constitutions than those in Western Europe. Why could not article 111 simply be amended?

38. Mr. MAVROMMATIS associated himself with the comments of Mr. Prado Vallejo, Mr. Ando and Mrs. Higgins.

39. Blasphemy laws, most of which contained provisions such as the one on the causing of justified general or individual disapproval, were an anachronism.

40. Article 6 (1) of the Basic Law of 1867, quoted in paragraph 139 of the report, stated that every citizen had the right to establish his residence and his domicile anywhere in the territory of the State. He asked whether there were any restrictions to that right in law or in practice. Moreover, did the addition of the words "and his domicile" to the word "residence" have any particular meaning or were they merely tautological?

41. On the question of search warrants, referred to in paragraph 173, he had the impression that when a warrant for arrest was issued and was executed

either by the police or the security authorities, a search would be superfluous. If a person was not suspected of having committed an offence, no warrant should have been issued.

42. Mr. WENNERGREN drew attention to the legislation with respect to conscientious objectors. There had been a case under the Optional Protocol in connection with similar legislation in Finland, in which the term of alternative service had been extended, when the procedure for the examination of conscientious objectors had been abandoned, in order to prevent abuse. Several members of the Committee had expressed the view that genuine objectors were thus being discriminated against merely because of administrative factors. That case might be of interest to Austria in considering its new legislation. He asked how Jehovah's Witnesses were dealt with, bearing in mind that they objected to any kind of alternative service. Finland, the Netherlands and Sweden had exempted them from such service because of the overpopulation of prisons which they had caused. It had been suggested that such exemption discriminated against other conscientious objectors and that all of them should be treated alike.

43. A case against Austria (Chorrherr v. Austria), in which a protester had been arrested, detained and subsequently convicted for disturbing public order by refusing to cease distributing leaflets and exhibiting posters at a military parade, was pending in the European Court. The Constitutional Court had dismissed the protester's appeals as unfounded on the ground that the police had not intended to interfere with his right to freedom of expression but had taken measures only in order to secure public order. It would have been more appropriate to ask about the protester's intentions rather than those of the police. The Constitutional Court judgement in that case had been rendered prior to the judgement of the European Court of Human Rights in the Lingens case. The Austrian delegation had informed the Committee that following the latter case, the Government had issued a decree calling upon the Austrian courts to be less restrictive with regard to freedom of expression. He asked whether that decree was expressed in terms that might be helpful in the Chorrherr v. Austria case. To place public order before freedom of expression, as had been done in that case, was incompatible with the provisions of the Covenant.

44. On the question of the right to seek information, the Austrian delegation had stated that the authorities provided information that was in their hands. However, information could be provided either by making a summary of the contents of a file or by allowing the person in question access to the file itself. Which of those means had been used in Austria in order to comply with the right to seek information?

45. Mr. FODOR asked whether any statistical data were available on the number of people who had applied for refugee status or temporary shelter in Austria after fleeing from the war in Yugoslavia. What measures had the Austrian Government taken to meet their needs and what future policy was envisaged with respect to them? Would all applications be granted or would quotas be established if their number increased?

46. Mr. SADI noted that article 14 of the Basic Law, quoted in paragraph 189 of the report, stated that no person could be compelled to take part in

religious activities or to attend a religious ceremony except in so far as he was subject to the authority of another person duly authorized by law. He asked who the person duly authorized by law would be. Would it, for example, be the parents of a child or juvenile?

47. Article 188 of the Criminal Code, quoted in paragraph 196, stated that anyone who publicly discredited a person or object worshipped by a church or religious community recognized in Austria would be liable to a prison term. Since he did not know which churches or religious communities were recognized in Austria and which were not, he would appreciate some further information on the subject.

48. On the question of freedom of the press, he had become the chief editor of a newspaper at a time when his Government had controlled freedom of the press and had exercised censorship. The newspaper had later been privatized, but censorship had continued in another form. Private ownership was not always a guarantee of objective reporting. Owners and managers could have an editorial policy for controlling the information they disseminated. Freedom of the press should be used to ensure objective reporting and not merely for its own sake, but that was frequently not the case. He asked what policy guidelines were followed in Austria to ensure such objective reporting. According to what criteria were the subsidies described in the report granted to the press and what was the selection mechanism?

49. Mr. MIKLAU (Austria) said that the radio and television monopoly was not a State monopoly but a separate broadcasting authority with a legal personality. It had been founded by the Federation and the nine Länder. For a small country like Austria, it would have been uneconomical to run a large number of separate broadcasting stations. Moreover, it had been feared that to establish a number of private broadcasting stations might ultimately lead to a private monopoly. Accordingly, it had been decided as a compromise to establish a separate body which, by a special Constitutional Act, had been declared independent, but which had an obligation to broadcast objectively both by radio and television, and some control had been necessary for that purpose. There was an internal control in the broadcasting authority itself in the form of a statute which offered newscasters the freedom to collect and broadcast information.

50. There was also a commission composed of judges and others which had the task of controlling the objectivity of radio and television broadcasts. Anybody could complain to that commission if they found a broadcast to be lacking in objectivity. The system had been set up 20 years earlier and there had been many cases in which the commission had intervened and in which broadcasters had been obliged to make a public announcement regarding the decision which that body had taken in the case. Furthermore, whatever the broadcasting commission might decide regarding the objectivity of a broadcast, there remained the possibility of appeal to the Constitutional Court. The Austrian authorities had therefore tried to harmonize contrary objectives. On the one hand there was a monopoly of broadcasting but on the other hand the authorities were well aware of the dangers of such a monopoly and had therefore deemed it necessary to develop a system of effective control of the objectivity of the information provided by the monopoly. There were currently three cases before the Strasbourg organs on the issue of broadcasting

monopoly. It was, however, the view of the Austrian authorities that, bearing in mind the fact that there were three levels of control, namely an internal control and two external controls, not to mention a very sensitive public, was such a monopoly in conformity with the European Convention and the International Covenant. There was no programme control by the Government.

51. In connection with the Chorrherr case, the issue was one of interpretation and opinion. In such a situation it would have been possible for the police authorities to wait and see whether trouble developed, with all the attendant risks of such a course, instead of deciding immediately that there was a danger in permitting people to hand out pamphlets and act accordingly. The police's judgement in that case had been recognized as correct by the Constitutional Court.

52. On the question of blasphemy, he pointed out that about 90 per cent of the Austrian population belonged to the Roman Catholic religion and in certain Länder the Roman Catholic religion was taken very seriously indeed. One recent blasphemy case had occurred in the Tyrol, where people were fervent believers in the Catholic faith.

53. Mr. Wennergren had asked how files were made available to people requesting information. Decisions on individual cases were based on what was regarded as the most adequate form of providing the information requested. Information in a file belonging to a proceeding affecting several parties would not be made available to an outsider because the interests of the parties to the proceeding might be damaged by such disclosure. In many cases, however, people requesting information would be permitted to have access to the appropriate file. The decision would depend on the circumstances in each case.

54. On the question of asylum, refugees crossing the border were not always political refugees. Austrian policy was that political refugees were given asylum under all circumstances. However, refugees coming for other reasons, particularly economic, could not be given asylum without further investigation of their claims. Currently the Government was trying to work out an adequate policy regarding refugees in the latter category.

55. Mr. Sadi had requested elucidation of the situation of persons having authority over others. The relationship concerned was of course that between parent and child. Children up to the age of 14 were, so far as religion was concerned, under the authority of their parents. When they reached the age of 14 they could decide for themselves which religion, if any, they would adhere to.

56. Mr. MIKLAU (Austria) said that he would like to supplement some of the comments which had been made.

57. In connection with the monopoly situation in the mass media, the Government was currently redrafting the anti-monopoly and anti-trust laws in general. The new draft law would have a special section relating to the media which would apply the same general principles but with additions which would take into account the special requirements of plurality of information in the media field. It was hoped that the draft bill would be available by the end

of 1991. There were special problems involved in the Austrian media market, a high proportion of which was currently in the hands of one large company. The question therefore was how far new provisions on anti-monopoly could have retroactive effect. In principle that was impossible for constitutional reasons. He was not sure whether in other countries such laws had been put into effect retroactively. The situation was different in, for example, the United States, where there was a tradition of anti-trust legislation and, if a certain company obtained ownership above a certain percentage, it could eventually be dissolved. The Minister of Justice would be holding hearings on the issue with leading experts in Austria and other European countries in the next few weeks and the result would be incorporated in the proposed draft law. A special problem would arise if it should prove impossible to apply the new law with retroactive effect because of constitutional or other reasons. The question which would then arise would be how the small media entrepreneurs could be subjected to such provisions when already one large company had a disproportionate share of the market; the rights of those small companies, which were already at a disadvantage, would thus be further restricted.

58. In connection with article 111 of the Criminal Code, it had been asked whether the decree issued to judges and prosecutors on the substance of decisions of the European Court had made any reference to the problem of public order in relation to freedom of expression. The answer was in the negative because the context was different. Violations of public order were not a criminal offence in Austria but an administrative offence. Judges and prosecutors were not therefore dealing with questions of public order in the context concerned. Consequently, the decree did not contain any passages on that problem.

59. Mrs. Higgins had asked why Austria did not amend article 111 of the Criminal Code. In reply he would like to say that it was not the law that was wrong but its interpretation, which had been changed in the light of the decision of the European Court. There was therefore no present need to change the law and he hoped that courts would continue to interpret article 111 in the light of jurisprudence taken over by the courts of appeal.

60. The comparison made by Mrs. Higgins with the provisions in Marxist constitutions was not to the point in so far as Marxist constitutions and Marxist criminal laws applied in cases where public prosecutions took place. Article 111 of Austria's Criminal Code was essentially a mechanism to defend the reputation of private individuals by means of private prosecution. The only exception to private prosecution would be the case of offence to a public official. In such a case, the public prosecutor would take proceedings in the matter. The context would nevertheless be one of private prosecution and the public prosecutor in fact would be acting as the injured party's lawyer.

61. Mr. Wennergren had inquired what the practice was in regard to Jehovah's Witnesses on the issue of military service. The problem had not been dealt with in legislation but a solution had been found in practice, based on the legal provision that the military authorities could dismiss people from military service who were unfit for such service.

62. He shared the view of Mr. Mavrommatis that the provisions contained in article 188 of the Criminal Code regarding blasphemy were obsolete. However,

those provisions were designed to defend public order and tolerance between different religions and other groups. The wording of article 188 of the Criminal Code as quoted in paragraph 196 of the report was incorrect in that the word "recognized" in the second line should read "existing" in Austria. Official legal recognition was not a prerequisite for being protected under that provision. The only condition was that the church or group should exist in Austria. There was a procedure for the legal recognition of churches and religious groups in Austria but that applied only in connection with the provision of subsidies. In the same quotation the phrase "belief, custom or institution recognized by law" was misleading as in fact the provision was intended to cover a belief, custom or institution which was "not unlawful". An expression of opinion on religious matters was not a criminal matter. Article 188 would however come into play in the case of public behaviour which caused justified annoyance and serious irritation to members of a particular religious group. The offence would lie, not in the substance of the remark but in the way in which it was expressed in public.

63. In reply to a point raised by Mrs. Higgins, the Austrian authorities considered that article 19 (3) of the Covenant provided a legal basis for certain limitations on freedom of expression in that it permitted certain restrictions so long as they were stipulated by law and were necessary for respect of the rights or reputations of others and for the protection of national security or of public order or of public health or morals. In that connection, Mrs. Higgins appeared to have interpreted the "rights of others" to mean the human rights of others. He did not share that view; reputation, for example, was not considered to be a human right. There was also a special provision for freedom of the arts in Austrian legislation and under it The Satanic Verses, for example, would be protected. In the Lingens case, the European Court of Human Rights had ruled that a distinction must be drawn between the substance of information and opinions which might be shocking and offensive and the form in which such information or opinion was expressed.

64. Mr. SZYMANSKI (Austria), replying to Mr. Prado Vallejo, said that the Convention relating to the Status of Refugees was applied in Austria and accordingly each refugee was welcome in Austria if coming directly from the country in which persecution had taken place. If, however, the refugee had passed through a country where his security was guaranteed, he would not be granted asylum but would be sent back to the latter country. If a person entered Austria as an apparent refugee he would either be recognized as a refugee or turned back to the country from which he had come.

65. Mr. Fodor had inquired about Austria's policy regarding Yugoslav refugees. The situation was that many refugees had entered Austria from Slovenia but had not requested asylum as they had been able to stay in Austria thanks to support from relatives. Only a few requests for refugee status had been received, and they had been granted. Yugoslav citizens from Croatia were also granted asylum if they requested it but most in fact had remained in Croatia. If a mass migratory movement were to occur, international action would be required.

66. Mr. BERCHTOLD (Austria), replying to the questions by Mr. Ando and Mr. Sadi regarding the financial subsidies given by the Austrian Government to newspapers, said he was not acquainted with the guidelines on the issue. The

Government, however, had no influence on the editorial policy of those papers. The money was given to support the papers because the Government felt that it was important that there should be a diversity of media for the people.

67. In reply to Mr. Mavrommatis' question regarding freedom of movement, he said nationals could move freely within the country.

68. He did not think that the equivalent of Speakers' Corner was likely to come into being in Austria. The restrictions on foreigners with regard to the holding of meetings which were mentioned in paragraph 221 of the report applied only to the case of interference in public affairs. It should be noted in that connection that article 16 of the European Convention also permitted certain restrictions on foreigners and that Austrian neutrality made such interference a particularly sensitive matter.

69. Mr. SADI asked how the answer to the question regarding The Satanic Verses could be reconciled with article 188 of the Criminal Code in that the book discredited the Prophet.

70. Mr. MIKLAU (Austria) said that article 188 of the Criminal Code had to be interpreted in the light of the freedom of the arts. The Satanic Verses was freely on sale in Austrian bookshops and nobody had thought of instituting criminal proceedings because of the book's publication.

IX. Rights of persons belonging to minorities (art. 27)

(a) What factors and difficulties, if any, exist with respect to the implementation and enjoyment of the rights under article 27 of the Covenant?

(b) Please provide information on the composition, functions and activities of the Ethnic Group Advisory Councils mentioned in paragraph 264 of the report.

(c) What is the percentage of persons belonging to minorities in public office?

71. Mr. BERCHTOLD (Austria) said the section of the report dealing with the rights of minorities had been somewhat short because it had been hoped to annex to it a recent government report on ethnic minorities, which included the views of the minorities themselves. Unfortunately, an English version of that lengthy but very interesting report had not been prepared in time for submission to the Committee, but it would be made available in due course. Austria experienced no such difficulties as those referred to in question IX (a) since the provisions of the State Treaty of 1955 went well beyond those of article 27. Because 90 per cent of Austrian citizens were Roman Catholic, religious minorities formed only a small proportion of the population; although they did not make a great impact on the religious life of the country, they encountered no restrictions in the profession and practice of their own religion.

72. The Ethnic Group Advisory Councils mentioned in question IX (b) were described in a separate reference document before the Committee. Provision

had been made to establish such advisory councils within the Federal Chancellery for the purpose of advising the Federal Government and its ministers in matters concerning ethnic groups. Their function was to safeguard and represent the overall cultural, social and economic interests of the ethnic group with which they were concerned; they were involved in the drafting of any legal instruments with a bearing on that group and were empowered to make proposals for the improvement of its situation. The advisory councils had the same position, functions and competence with regard to the governments of the Länder. Four groups of ethnic minorities lived in Austria. There were Slovenes in South Carinthia, Croatians and Hungarians in Burgenland and Czechs in Vienna. Those ethnic minorities were recognized by the Austrian Government, which wished an ethnic group advisory council to be established for each. Advisory councils were in place for the Hungarian and Slovene minorities but difficulties had been experienced in the case of the Croatian and Czech groups, which had not managed to agree on the manner in which they wished to be represented. It was, however, hoped that eventually all four advisory councils would be in operation. The financial subsidies for ethnic minorities, which also involved the advisory councils, were being substantially increased; nearly 23 million schillings had been spent in such subsidies during the period 1987-1989.

73. It had not been possible to determine the percentage of persons belonging to minorities in public office (question IX (c)) as they were difficult to identify. An extremely large number of Austrian citizens had family names of non-Austrian ethnic origin but the vast majority of them considered themselves simply as Austrian citizens. Only those who claimed affiliation with a given ethnic group were considered to belong to that group, and they were numerically small in relation to the total population of the country.

74. The CHAIRMAN invited the members of the Committee to make their concluding observations.

75. Mr. SADI said the responses provided by the Austrian delegation to the Committee's questions had been very straightforward, honest and direct. Where there were any faults and shortcomings, they had been frankly acknowledged. The dialogue had been of the sort that the Committee always looked for in its exchange of views with States parties.

76. He continued to feel concerned, however, about the list of reservations Austria maintained to the Covenant and hoped the Austrian Government would consider reducing their number, if it could not withdraw them all. A further concern was the status of the Covenant in relation to Austrian law, particularly in view of the differences between the Covenant and the European Convention on Human Rights, which had been made part of Austrian law as early as 1964.

77. Mr. PRADO VALLEJO expressed satisfaction at the very positive and constructive dialogue that had taken place between the Committee and the Austrian delegation. He had, however, a number of points which he would like the Austrian delegation to submit to its Government's consideration.

78. There was a need for proper investigation of cases of alleged torture. Furthermore, according to information in his possession, the police frequently

overstepped their authority by using threats to dissuade victims from complaining of ill-treatment. He was concerned, too, that administrative courts were composed solely of civil servants, which in his view was not a sufficient guarantee that cases before such courts would be treated with the necessary impartiality. He, like other Committee members, felt that the list of Austrian reservations to the Covenant was excessive and that their wording often constituted a distortion of articles of the Covenant. Another concern was the State monopoly of radio and television, which to some extent prejudiced and undermined one of the guarantees of freedom of expression.

79. Mr. WENNERGREN thanked the Austrian delegation for its contribution to a fruitful, constructive and enlightening dialogue. It was clear that the legal system and practices in Austria were of a very high standard and promoted and safeguarded human rights.

80. He was concerned by the allegations of ill-treatment by police officers. He believed, however, that Austria would find a way to solve the problem and eradicate such ugly practices from the police force. With regard to freedom of expression, it was unacceptable that a person should be found guilty by the courts of a disturbance of public order when his act had merely been to distribute pamphlets in order to impart information, a right protected by article 19 of the Covenant. In distributing pamphlets, a person's intent was not to create a disturbance but to impart information, although it was true that in such circumstances disturbances sometimes occurred, in which case the police was entitled to interfere. However, the distribution of pamphlets by itself could not be considered an offence against public order. A person should be able to enjoy the freedom to impart information and ideas of all kinds without being arrested for so doing. He therefore hoped that Austria would be able to review the relevant legislation and court practices to ensure that freedom of expression was fully respected.

81. Mr. FODOR said the Committee's dialogue with the Austrian delegation had been extremely fruitful. One reason was that Austria had a long tradition of respect for fundamental rights and freedoms both within and outside its borders. Non-governmental organizations concerned with human rights were able to pursue their activities there without hindrance. Furthermore, Austria had always played an active and at times a leading role in international standard-setting in human rights and had over many decades encouraged Eastern European countries in the fight against human rights violations. Another was that the Austrian Government had provided a well-prepared, comprehensive and generally excellent report. Lastly, the high calibre of the Austrian delegation and the great expertise and dedication its members had brought to the task had been a key factor in the success of the debate.

82. He would address only one of the minor concerns raised during consideration of the report, the many old laws still in force in Austria. Although the fact that laws enacted a century previously were still in force was evidence of the care with which they had been drafted and the absence of major alteration to the legal system, nevertheless some changes must have occurred, both at the domestic and the international level. Even though those changes might be duly reflected by the adoption of amendments, after a law had been in force for a very long period its replacement should be considered. The replacement of old laws on fundamental rights by new ones would surely

facilitate the application of such provisions for the authorities, the courts and individuals, even in a country where long-standing legal texts were accorded great respect.

83. Mrs. HIGGINS said the exchange of views with the Austrian delegation had been extremely satisfactory and informative. She commended both the report and the replies given.

84. She noted that discrimination in respect of any legal right or obligation on grounds of race was prohibited in Austria by virtue of the Constitutional Act ratifying the International Convention on the Elimination of All Forms of Racial Discrimination. However, discrimination in respect of any legal right or obligation on grounds of citizenship or any ground other than race was not covered by Austrian law, since no provision on the matter was to be found in the Constitution or the European Convention on Human Rights, which had the status of domestic law. Perhaps some consideration could be given to the possibility of introducing at least articles 26 and 27 of the Covenant, which were not reflected in the European Convention on Human Rights, into domestic law in some appropriate form.

85. Although she was satisfied with the delegation's reponses to questions about allegations of maltreatment and the attitude of the Government in dealing with that problem, she considered that articles 7 and 9 of the Covenant required an entitlement to a lawyer at the interrogation stage. She hoped serious consideration would be given to providing immediate relief to the problem by the use of tapes and videos. That might not yet be standard procedure in democratic countries, but it would be useful in the short term until the comprehensive reform of the Criminal Code was complete.

86. The contention that the "rights of others" referred to in article 19 (3) of the Covenant were not human rights but some other form of rights was surely incorrect, since that would permit any State to provide a right under national law that would place a limitation on a right enshrined in the Covenant. Rights in the Covenant that permitted limitations to human rights were necessarily human rights themselves. Nor could it be argued that reputation was not a human right, when it was precisely provided for in article 17.

87. She accepted that the interpretation given to article 111 of the Criminal Code was crucial, but asked whether the problem could not be solved more simply by amending that article. Surely it was an avoidance of the issue to claim that actions under article 111, even if brought by the State, were in the nature of private prosecutions. The reality was that the law, however formulated, permitted restrictions on speech, in protection of public officials, that were broader than those commonly found in contemporary democracies.

88. At present Western Europe appeared unfortunately to be seized by a relatively generalized xenophobia and a disturbingly specific rise in anti-Semitism. It was possible to speculate on the reasons for that malaise, but it was critical both for the protection of national and religious minorities and for the general health of the international community that States and Governments should give a lead on such matters. Austria would

appear to be in a position, for historical and geographical reasons, to play a special role in that area and was, she was persuaded, keeping such matters under close scrutiny and taking every possible containment action.

89. While understanding the reservation Austria had entered to the Optional Protocol, since many States were also reluctant to have a case taken twice through two different systems, she concurred with the Chairman that its Government would no doubt take the larger issue of reservations to the Covenant into careful consideration.

90. Mr. EL SHAFEI expressed his appreciation for the Austrian delegation's contribution to what had been an instructive and useful dialogue. Despite the constitutional and legal guarantees against torture and ill-treatment in Austria, there were continuing allegations that persons in police custody or within the physical control of police officers were sometimes subjected to unwarranted physical violence. Concern had also been expressed with regard to the procedures available for making complaints against the police, the supervision of criminal investigation procedures and the treatment by those responsible for the administration of evidence allegedly obtained through ill-treatment. He concurred with those members of the Committee who believed that reforms were necessary in all those areas.

91. The delegation of Austria had explained the reasons for its reservation to the Optional Protocol, but he felt that reservation was unacceptable as long as there remained a number of fundamental freedoms and rights enshrined in the Covenant that were not provided for by the European Convention on Human Rights. The report and the responses of the Austrian delegation showed that the Austrian authorities were anxious to cooperate with the bodies responsible for monitoring international human rights instruments. The Austrian authorities might therefore wish to reconsider their position with respect to that reservation, as also their many reservations to articles of the Covenant.

92. The CHAIRMAN said he wished to convey the thanks of the members of the Committee to the Austrian delegation for its responses to their questions on an excellent report. On behalf of the Committee, he requested the delegation to convey the Committee's concluding observations to the competent authorities.

93. Mr. BERCHTOLD (Austria) thanked the Committee for the warm welcome it had accorded to his delegation, which had found the questions and dialogue extremely interesting.

94. The CHAIRMAN said that the Committee had concluded its consideration of the second periodic report of Austria.

The meeting rose at 1.05 p.m.